

# **Statutory Guidance on the Service Police complaints system**

Version 1, 2025

Upholding fairness, instilling trust





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The **Service Police Complaints Commissioner (SPCC) Statutory Guidance on the Service Police complaints system** was published by the SPCC in Version 1, 2025, and was correct at the time of publication.

This publication is available on our website [www.thespcc.org.uk](https://www.thespcc.org.uk)

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# Foreword

This Guidance is issued under Regulation 85 of the Service Police (Complaints etc.) Regulations ('the Regulations'). It plays an essential role in supporting a fair, transparent and accountable Service Police complaints system and the values that must guide its operation: integrity, transparency and accountability.

The Guidance provides a clear explanation of the legal framework governing the handling of complaints, conduct matters and incidents involving death or serious injury in Service Policing. It is designed to support all those responsible for navigating the often-difficult terrain of the complaints process, by offering structure, clarity and consistency where discretion is needed. The Guidance is intended to help complaint handlers and decision makers make lawful and proportionate decisions.

However, this document does more than that – it reflects a principled commitment to ensuring that those who complain are heard with respect, and that those who are the subject of complaints are treated fairly. It is only by holding these two imperatives in balance that the system can fulfil its purpose: to reinforce the integrity of Service Policing and strengthen public confidence in the complaints system.

The Guidance builds on the foundation laid by JSP 849. It incorporates the contents of JSP 849 parts 1 and 2, including its policies and procedures. While some content, such as provisions on accessibility, have been expanded to improve clarity, unnecessary duplications have been removed to ensure that the Guidance is a streamlined and practical resource.

The content of this Guidance will be kept under review and may be updated from time-to-time as required. It is focused on Part 3 of the Regulations and **does not address issues beyond its remit, and is not a vehicle for resolving wider challenges facing Service Policing**. The introduction clearly sets out what falls outside the scope of the Guidance, including vetting reviews and the relationships between Commanding Officers and Professional Standards Departments. Its purpose is to articulate the SPCC's interpretation of the Regulations.

Service Policing, at its best, protects the vulnerable, preserves operational effectiveness, and ensures that the use of power is fair and lawful. However, public confidence in Service Policing cannot be taken for granted. It must be earned, maintained and, where damaged, repaired through processes that are open, fair and just.

Complaints are an essential safeguard. The law does not demand perfection from those who serve but it does demand that, when things go wrong, they are recognised addressed, and as far as possible remedied.

All those involved in the Service Police complaints system must have regard to the Guidance and a sound justification for departing from it or risk legal challenge.

# 1 Introduction

## 1.1 General introduction

- 1.1.1 This Guidance is issued under Regulation 85 of the Service Police (Complaints etc.) Regulations ('the Regulations'). It incorporates both the Service Police Complaints Policy and Procedure previously set out in JSP 849 parts 1 and 2. The Commissioner issuing their own guidance ensures independence, impartial oversight and alignment with the general functions set out in the Regulations. It is only the Commissioner who has the authority to prescribe such matters. The content of this Guidance will be kept under review and may be updated from time-to-time as required.
- 1.1.2 While this Guidance is comprehensive and incorporates both parts of JSP 849, it is focused on Part 3 of the Regulations. It does not include guidance on any of the following:
- matters of military justice
  - matters of general Service conduct (although there may be overlaps with the Service Police complaints system)
  - the procedure and conduct of misconduct hearings, which should be the subject of separate regulations and appropriate guidance<sup>1</sup>
  - levels of outcome following any findings of misconduct or gross misconduct – these are matters for future guidance on outcomes derived from a regulatory scheme for misconduct hearings<sup>2</sup>
  - vetting reviews
  - the relationships between Commanding Officers and Professional Standards Departments
  - other relationships which are or will be the subject of Memoranda of Understanding
  - those matters covered in governance frameworks or service level agreements

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1 In the meantime, those conducting these hearings might get some support from the Home Office guidance for civilian police complaint matters. See Home Office Guidance – Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing. Available at: [https://assets.publishing.service.gov.uk/media/5e3ae3efed915d09378bf705/Home\\_Office\\_Statutory\\_Guidance\\_0502.pdf](https://assets.publishing.service.gov.uk/media/5e3ae3efed915d09378bf705/Home_Office_Statutory_Guidance_0502.pdf)

2 In the meantime, those conducting these hearings might get some support from the College of Policing guidance on outcomes in police misconduct proceedings. Available at: <https://assets.college.police.uk/s3fs-public/2022-08/Guidance-on-outcomes-in-police-misconduct-proceedings.pdf>

- 1.1.3 The Service Police Complaints Commissioner (SPCC) has a duty to secure and maintain the confidence of people subject to Service law and civilians subject to Service discipline. The SPCC also has a responsibility to improve public confidence in the Service Police complaints system by ensuring it is efficient and effective, and that Service Police are accountable for their actions.
- 1.1.4 This Guidance is one of the ways in which the SPCC helps Service Policing bodies and forces to achieve high standards in the handling of complaints, conduct matters, and death or serious injury (DSI) matters concerning those serving with the Service Police.
- 1.1.5 An effective Service Police complaints system is vital. The way in which complaints, conduct matters and DSI matters are dealt with has a huge impact on confidence in the Service Police. Where they are dealt with well, it helps to restore trust, bring about improvements in policing and make sure something that has gone wrong does not happen again. Where they are dealt with badly, it damages confidence in both the Service Police and the Service Police complaints system. The handling of all matters should improve Service Policing and individual performance through learning and put things right when they have gone wrong, while ensuring there is appropriate accountability at both individual and Service Police force level.
- 1.1.6 Legislation ensures that matters can be dealt with at the most appropriate level, supporting both the efficiency and fairness of the complaints system. Provision has been made for the most serious matters to be investigated independently. Below that level, there are a wide range of complaints that are most appropriately dealt with by the Service Police forces themselves.
- 1.1.7 While initial complaints may also be made directly to the SPCC, they should ordinarily be made in the first place to the Professional Standards Departments of the relevant Service Police force, who will in most cases be the Appropriate Authority.<sup>3</sup> Where there is good reason for the SPCC to intervene – for instance where there are grounds for a mandatory referral or other good reasons for a referral – the matter will be referred to the SPCC by the body which receives the initial complaint. In other cases, the high likelihood is that the matter will be referred back by the SPCC to the relevant Appropriate Authority.
- 1.1.8 Responding to matters in a timely manner is key to securing confidence in the complaints system and providing good customer service (to complainants and interested people, as well as anybody whose actions are being considered). The legislation introduced a process to hold those responsible for an investigation to account if an investigation takes longer than 12 months to complete from the date of referral to the Appropriate Authority or date referred to the SPCC, if referred directly. In some instances, timing will be crucial to the proper exercise of investigative functions, such as matters where there is a forensic window for the gathering of evidence.

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3 For the meaning of Appropriate Authority, see 1.5 below.



- 1.1.9 The first section of this Guidance sets out the principles of accessibility, reasonable and proportionate handling, and learning and improvement, which are crucial to a strong, effective and efficient complaints system. An annex is also included to deal with super-complaints (see paragraph 1.9.8 below).

## 1.2 Who the Guidance applies to

- 1.2.1 This Guidance applies to the Defence Council, the Admiralty Board, Army Board and Royal Air Force Board, the Provost Marshals and other members of the Service Police forces.<sup>4</sup> All those working in Service Policing must have regard to the Guidance.
- 1.2.2 If the people who the Guidance applies to do not follow it, they need to have a sound rationale and justification or risk legal challenge. Failure to follow the Guidance is admissible in evidence in legal proceedings, including any disciplinary proceedings and any appeal proceedings after a disciplinary decision.
- 1.2.3 This Guidance is written with the needs of professionals within Service Policing and Service Police forces in mind. It is also available to the public and other individuals and groups who have an interest in the system.

## 1.3 Service Police forces

- 1.3.1 There is a Service Police force for each of the Services headed by a Provost Marshal: the Royal Navy Police, the Royal Military Police and the Royal Air Force Police. In addition, there is a Provost Marshal for the tri-Service Defence Serious Crime Command (DSCC), which was established on 22 April 2022. The DSCC is the strategic command headquarters for the Defence Serious Crime Unit, which investigates the most serious crimes alleged to have been committed by people subject to Service law in both the UK and overseas.
- 1.3.2 To protect the Service community and bring justice to victims of crime, members of the Service Police are granted a wide range of powers. These powers include the authority to stop and search, to arrest, to use reasonable force, to search premises and seize property, and to engage in covert investigation and surveillance.
- 1.3.3 Legislation, supported by various Codes of Practice, regulates the use of Service Police powers. In addition, Service Police Codes of Conduct set out the professional standards that reflect the expectations that the Service community and wider public have for those working in Service Policing.
- 1.3.4 By way of background, the single Service Provost Marshals had established non-statutory complaints procedures to deal with complaints about members of their forces. The need for **independent oversight** for complaints against the Service Police had been raised in Parliament and the subject of debate in both Houses.
- 1.3.5 In 2017, the Ministry of Defence commissioned a review of the Service Justice System in preparation for the next Armed Forces Bill. The Service Justice System Review (carried out by HH Shaun Lyons and supported by former Chief Constable

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4 See Regulation 85.

Sir Jon Murphy) identified and considered a range of options for establishing an independent oversight mechanism to deal with complaints made against the Service Police. The review recommended establishing a new independent body to provide oversight, and the government agreed to model the Independent Office for Police Conduct, which provides oversight functions for the civilian police.

- 1.3.6 Legislative changes were made to the Armed Forces Act 2006 via the Armed Forces Act 2021. These changes established a new office holder: the Service Police Complaints Commissioner, and new statutory procedures. These procedures correspond with the provisions set out in and part 2 of the Police Reform Act 2002 for the handling of complaints, conduct matters and DSI matters.
- 1.3.7 The first Service Police Complaints Commissioner, Margaret Obi, was appointed by His Majesty the King in November 2022.

## 1.4 The SPCC

- 1.4.1 The SPCC oversees the Service Police complaints system and is **structurally and operationally independent from the Service Police, the Ministry of Defence and government**.<sup>5</sup> This independence is a core and crucial aspect of the SPCC's role and responsibility to improve trust and confidence in the Service Police complaints system.
- 1.4.2 The three general functions of the SPCC are to:<sup>6</sup>
- a. secure, maintain and review arrangements for the procedures that deal with complaints, conduct matters, and DSI matters
  - b. secure the confidence of people subject to Service law and Service discipline, and secure public confidence in the Service Police complaints system
  - c. make recommendations and provide advice in relation to those arrangements (for example, training or procedures where the SPCC believes this may improve policing practice)
- 1.4.3 The SPCC is also required to consider certain matters referred to them.<sup>7</sup> Complaints requiring referral to the SPCC include those that either:
- a. allege that the conduct or other matter complained of has resulted in DSI
  - b. fall within the mandatory referral criteria (see below)

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5 See paragraphs 1 and 2 of Schedule 14A of the Armed Forces Act 2006 and Regulation 3(c).

6 See Regulation 3.

7 Regulation 13 relates to complaint referrals, Regulation 24 relates to conduct matters and Regulation 29 relates to DSI matters.

- c. relate to the conduct of a Provost Marshal, if the Appropriate Authority is unable to satisfy itself, from the complaint alone, that the conduct (if it were proved) would not justify disciplinary or administrative action procedures being taken<sup>8</sup>
- d. the SPCC notifies the Appropriate Authority about referring the complaint
- e. relate to grave subject matter or exceptional circumstances which make referral appropriate

- 1.4.4 In addition to the above instances where a matter may be positively referred to the SPCC, the Commissioner has the power to treat any matter which comes to their attention other than by referral, as though the matter had been referred.<sup>9</sup> Where any disagreement arises regarding whether a matter should or should not be referred to the SPCC, the Regulations enable the Commissioner to be the ultimate decision maker.
- 1.4.5 Any investigator appointed by the Commissioner has all the powers of a Service Police officer.<sup>10</sup>
- 1.4.6 In any instance where it is not obvious which body should most appropriately investigate a complaint, all bodies dealing with the complaint should have regard to any potential evidence which is time-sensitive. **For an investigation to be effective, acting within any forensic windows is a priority (see 12.10.1 below).**

## 1.5 Appropriate Authorities

- 1.5.1 The Service Police complaints system has been designed to enable matters to be dealt with at the most appropriate level. This ensures both efficiency and fairness, while enabling the most serious matters to be investigated independently.
- 1.5.2 As such, Appropriate Authorities are responsible for the initial handling of complaints and have various functions and responsibilities set out in the legislation. In general terms, **an Appropriate Authority is the Provost Marshal of the Service Police force that the dissatisfaction is expressed about** or, where a complaint relates to the conduct of an individual, the Provost Marshal who has direction and control over that person.
- 1.5.3 Where a complaint relates to the Provost Marshal, the Appropriate Authorities are as follows:
  - a. the **Admiralty Board** in relation to the Provost Marshal (Navy)

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8 Administrative action procedures under Regulation 2 mean the procedures and processes that the conduct of a member of a Service Police force is considered under to determine whether it is misconduct or gross misconduct, and if so whether any administrative action is to be taken in relation to it.

9 See, for instance, Regulation 14.

10 Pursuant to Regulation 36(4), which states that an SPCC investigator “has the same powers as a Service policeman for the purposes of the carrying out of the investigation and all purposes connected with it”. See also 1.3.2 and 1.3.3 above.

- b. the **Army Board** in relation to the Provost Marshal (Army)
- c. the **Royal Air Force Board** in relation to the Provost Marshal (Royal Air Force)
- d. the **Defence Council** in relation to the Provost Marshal (DSCC)

- 1.5.4 The Defence Council and single Service Boards are also relevant review bodies for reviews that do not meet the grounds to be considered by the SPCC. In practice, most reviews considered by the Defence Council or a single Service Board will relate to complaints handled outside of an investigation. This is because if a complaint meets any of the threshold grounds that require it to be investigated, the complaint will also have met one or more grounds which define the relevant review body as the SPCC.
- 1.5.5 **The Defence Council or a single Service Board may delegate the exercise or performance of all or any of its powers and duties under the Regulations to any person.** However, there is an exception where delegation could reasonably give rise to a concern as to whether the person could act impartially.<sup>11</sup>
- 1.5.6 A Provost Marshal may also delegate the exercise or performance of all or any of their powers and duties under the Regulations, but there are certain restrictions.<sup>12</sup> In the case of a complaint or conduct matter concerning a senior officer, a Provost Marshal can only delegate to another senior officer.<sup>13</sup> In any other case, delegation can only be made to a member of a Service Police force of at least the rank of either:
- a. Lieutenant in relation to the Royal Navy Police
  - b. Captain in relation to the Royal Military Police
  - c. Flight Lieutenant in relation to the Royal Air Force Police
- 1.5.7 When a senior officer is being investigated and the matter does not require a mandatory referral to the SPCC, the Provost Marshal remains the Appropriate Authority and should appoint a Service Police officer from a different Service Police force to lead the investigation.<sup>14</sup> Or, they should delegate to a senior officer of another Service Police force, who would in turn appoint an investigator from that Service Police force to lead the investigation.
- 1.5.8 While it is open to the Provost Marshal to make a voluntary referral to the SPCC, this should not be an automatic event and the Provost Marshal should in the first place exercise their powers so that the matters are dealt with at the level of Appropriate Authority.

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<sup>11</sup> See Regulation 71.

<sup>12</sup> See Regulation 84.

<sup>13</sup> See Regulation 2.

<sup>14</sup> Where the conduct of a senior officer is being investigated, the investigation may not be carried out by another member of that force. See Regulation 35 (d)(ii).

- 1.5.9 Where a complaint has been recorded and is handled other than by investigation, a Provost Marshal can delegate to any person except where this could reasonably give rise to a concern as to whether the person could act impartially.<sup>15</sup>
- 1.5.10 Finally, Appropriate Authorities should always be mindful of the need for confidence in the arrangements they make, as this impacts the overall confidence in the complaints system and the wider Service Justice System. It is particularly important that those who might be affected by decisions made under delegated powers have confidence that the person who the power is delegated to is able to act impartially.

## 1.6 The role of Commanding Officers in the Service Police complaints system

- 1.6.1 Commanding Officers are an important part of the Service Justice System and there are certain Service offences that can be heard immediately.
- 1.6.2 As such, an investigation (whether local, directed, or independent) could result in a referral to a person's Commanding Officer. This may occur where there is an indication that the person concerned has committed a Service offence capable of being heard immediately.
- 1.6.3 A referral could also be made where, in the opinion of the SPCC, it is appropriate that matters dealt with in an investigation report should be considered by the person's Commanding Officer. If a referral is made by the SPCC, the Commanding Officer must notify the Commissioner of any decision or action taken in respect of the matters dealt with in the report.

## 1.7 Legislative background

- 1.7.1 The legislation relating to the Service Police complaints system is set out in the following primary and subordinate legislation.
- a. Section 365BA of the **Armed Forces Act 2006** ('the 2006 Act') (as amended by the Armed Forces Act 2021) establishes the Office of Service Police Complaints Commissioner.<sup>16</sup> Part 14B (Service Police: Complaints, Misconduct etc) provides a regulation-making power to enable the creation of the Service Police Complaints Commissioner similar to the system that applies to the civilian police in England and Wales.<sup>17</sup>
  - b. **The Service Police (Complaints etc) Regulations 2023** – 'the Regulations' – set out the process and procedures for the Service Police complaints system.<sup>18</sup>

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<sup>15</sup> See Regulation 84.

<sup>16</sup> The Armed Forces Act 2006. Available at: [www.legislation.gov.uk/ukpga/2006/52/contents](http://www.legislation.gov.uk/ukpga/2006/52/contents)

<sup>17</sup> The Service Police complaints system is modelled on the oversight functions of those provided for the civilian police, which is set out in and under Part 2 of the Police Reform Act 2002 and Schedule 3 to that Act. That system is overseen by the Director General of the Independent Office for Police Conduct.

<sup>18</sup> The Service Police (Complaints etc) Regulations 2023.  
Available at: [www.legislation.gov.uk/uksi/2023/624/contents/made](http://www.legislation.gov.uk/uksi/2023/624/contents/made)

- 1.7.2 The 2006 Act (as amended) and the Regulations provide the legal framework for the Service Police complaints process and set out the functions of the Service Police Complaints Commissioner ('Commissioner').
- 1.7.3 As well as the legislation and guidance governing the Service Police complaints and disciplinary systems, Service Police forces must have due regard to other legislation that has implications for how they exercise their roles and responsibilities. In particular:
- the Public Sector Equality Duty and their duties to:<sup>19</sup>
    - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010
    - advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
    - foster good relations between people who share a relevant protected characteristic and people who do not share it<sup>20</sup>
  - the Welsh Language Act 1993 and Welsh Language (Wales) Measure 2011 including standards applicable to respective organisations
  - data protection legislation and guidance from the Information Commissioner's Office – for example, Service Police forces should consider how they can signpost their privacy information to complainants at the outset of the handling of a complaint, to avoid data protection breaches and a lack of trust in how personal data is handled

## 1.8 Key roles in the Service Police complaints system

- 1.8.1 **SPCC** – This Guidance is for the Service Police forces handling complaints. Therefore, it does not detail all the SPCC's own responsibilities under the Regulations, or how it will carry out those responsibilities. However, these are touched on where necessary to explain what is expected of forces and local policing bodies.
- 1.8.2 Powers and responsibilities that are conferred or imposed on the Commissioner of the SPCC are referred to in this Guidance as being undertaken by the SPCC.
- 1.8.3 **Appropriate Authorities** – The Appropriate Authority for a complaint is the Provost Marshal in charge of the person who is the subject of the complaint at the time of the alleged conduct.
- 1.8.4 However, if the complaint relates to a Provost Marshal for serious crime, the Appropriate Authority is the Defence Council or the relevant Service Police force board.<sup>21</sup>

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<sup>19</sup> Section 149 of the Equality Act 2010.

<sup>20</sup> The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

<sup>21</sup> Regulation 2(3).

- 1.8.5 This Guidance refers to the Appropriate Authority where legislation specifically confers a power or responsibility on them.

## 1.9 How the Guidance is arranged

- 1.9.1 **Part 1: Principles of the complaints system** – This section outlines principles that are crucial to achieving a fair and effective complaints system: accessibility for all, taking a reasonable and proportionate approach, and using the system to act on learning to ensure continuous improvement.
- 1.9.2 **Part 2: Initial handling of complaints** – This section outlines initial considerations and actions on receipt of a complaint, including the definition of a complaint and what action can be taken before recording a complaint under the Regulations.
- 1.9.3 **Part 3: Handling complaints, recordable conduct matters, death or serious injury matters and super-complaints** – This section outlines requirements and considerations when investigating and handling matters under the Regulations. This includes requirements around referral to the SPCC, keeping people informed, severity assessments, special procedures and reporting.
- 1.9.4 **Part 4: Outcomes of handling** – This section outlines action on receipt of an investigation report, outcomes available, communicating outcomes and responsibilities relating to reviews.
- 1.9.5 **Part 5: General matters** – This section is for general matters relating to this Guidance.
- 1.9.6 Flowcharts setting out processes for handling complaints, recordable conduct matters, DSI matters and reviews are presented in the annexes.
- 1.9.7 Rather than including definitions throughout the Guidance itself, key terms and concepts are defined in the glossary in Annex A.
- 1.9.8 Annex J of this Guidance deals with super-complaints. Although Regulation 85 does not strictly include Part 4 of the Regulations and there is a limited list of designated bodies who may make a super-complaint, any super-complaint is likely to be of general importance and potentially broad relevance. The Commissioner considers it important for any super-complaint to be dealt with transparently and for those with a legitimate interest to understand the process and the nature of the investigatory duties and powers as set out in the Regulations. Therefore, this aspect of the Commissioner's functions is included in the annex.



# 1

## **Part 1: Principles of the complaints system**



## 2 Accessing the Service Police complaints system

### 2.1 The importance of an accessible system

- 2.1.1 Easy access to the Service Police complaints system is vital to ensuring and demonstrating that the Service Police are transparent, accountable and responsive. The complaints system enables concerns to be raised and provides a better understanding of why a decision or action was taken. Complaints provide valuable feedback and are an important source of learning to help forces, or individuals, improve the service they deliver.
- 2.1.2 All those in the Service Police forces and those overseeing them share responsibility for increasing awareness of the Service Police complaints system and promoting access to it. They must make provisions for access to the system that reflect the needs, expectations and rights of complainants, and that those provisions do not deter people from making complaints.

### 2.2 Promoting access

- 2.2.1 All organisations with responsibility for handling Service Police complaints should ensure that people can quickly and easily find information about how to make a complaint and what they can and cannot expect from the complaints system. It should be clear, accurate and easy to understand. Information should be publicised in a range of ways and be available when and where it may be needed.
- 2.2.2 Service Police forces should promote the complaints system to the communities they serve, especially to those that may feel less confident about using it. They should work with other organisations to spread information and assess what support different sections of the community may need to access the complaints system.
- 2.2.3 Service Police forces should ensure that the information they provide gives prominence to how to complain directly to the relevant Service Police force, rather than to the Service Police Complaints Commissioner (SPCC). It should make clear that complaints made to the SPCC will automatically be passed to the Service Police force for logging, unless there are exceptional circumstances that justify not passing it on.<sup>22</sup>

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<sup>22</sup> See Regulation 13(10).

- 2.2.4 In certain **exceptional circumstances**, the SPCC does not have to forward a complaint to the Appropriate Authority. Exceptional circumstances can fall into one of two broad categories:
- a. where notification of the complaint is likely to lead to a real risk that the complainant or any other person may suffer serious physical harm or loss of life
  - b. where the notification is likely to lead to a real risk of prejudice to the interests of national security
- 2.2.5 In all cases of exceptional circumstances, there is a two-stage test:
- a. the risk must be real – this means that it would not be sufficient for the complainant to refer to exceptional circumstances without some description of why and how they believe the exceptional circumstance may be genuine
  - b. if the first stage is met, does the risk of forwarding the complaint outweigh the benefits of passing it on?
- 2.2.6 There will not be many cases, if any, where the risks of exceptional circumstances outweigh the benefits of forwarding the complaint.<sup>23</sup>
- 2.2.7 Service Police forces must ensure that people who wish to make a complaint can do so in a variety of ways. This should include access to paper-based forms, online forms, an email address, telephone numbers and, where practical, face-to-face meetings.
- 2.2.8 The SPCC recognises that there may be times when there is a need to manage contact with complainants whose actions or behaviour are considered to have a significantly adverse impact on staff welfare or resources. In these circumstances, access should be managed appropriately. However, a complainant must always be able to access the system by some means.

## 2.3 Recognising and overcoming barriers

- 2.3.1 It is essential that the system can be accessed by all those who may wish to make a complaint.
- 2.3.2 Service Police forces must recognise that an individual's specific needs or circumstances may impact on their confidence and ability to make a complaint. For example, a complainant may feel less willing or able to make a complaint owing to their age, physical or mental health issues, cultural differences, learning difficulties, or their language or literacy skills. They may also feel particularly unwilling or unsure owing to a combination of intersecting factors that make up their identity, such as

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23 For example, in circumstances where the complaint is also connected to individuals who would be alerted if there was an initial disclosure, which might pose a real risk to the complainant's wellbeing, or risk the loss of important evidence. If the person dealing with the complaint believes they have such a case, they should discuss the complaint with their line manager, who will escalate the matter further if required.

gender, sexuality or race, or owing to the nature of their previous interaction with the Service Police. Forces should recognise that making a complaint about the Service Police may be intimidating for some.

- 2.3.3 Service Police forces need to be mindful of potential barriers to engagement and have robust strategies for promoting access. They must take all reasonable steps to remove barriers that might prevent any of the communities they serve from engaging with the complaints system. They should also be mindful that if a complaint is not dealt with effectively from the start, it can lead to the complainant disengaging from the process without a resolution to their issue and losing confidence in the Service Police.

## **2.4 Complainants who may need additional assistance**

- 2.4.1 Some people may need adjustments to usual procedures to enable them to access the complaints system. For example, it might be that a complainant finds communicating in English difficult, or is disadvantaged in some other way. It is important that no-one is discouraged from using the Service Police complaints system.
- 2.4.2 Service Police forces must ensure their actions reflect the Equality Act 2010, the Public Sector Equality Duty and the Armed Forces Code of Practice for Victims of Crime.
- 2.4.3 Service Police forces need to be aware that what is customary for non-disabled people can be difficult for someone who has an impairment or health condition. Under Section 20 of the Equality Act 2010 there is a duty to make reasonable adjustments to ensure that a disabled person does not suffer any substantial disadvantage when accessing a service.
- 2.4.4 It must always be presumed that a person who wishes to make a complaint has the capacity to do so (the ability to make decisions) unless it is established that they do not.<sup>24</sup>
- 2.4.5 The assistance of a relative, carer or other representative may be necessary to help a complainant overcome any barriers to making a complaint. They can also help a complainant make their wishes and the details of their complaint clear. However, in some cases, additional support may still be required. For example, it may be appropriate to signpost access to other support services. Service Police forces must always consider what adjustments may be appropriate in the circumstances.
- 2.4.6 This Guidance highlights that Service Police forces need to provide certain information in writing. This not only reflects a statutory requirement, but also ensures that a formal record exists of the information provided or action taken. Written communication avoids uncertainty if a dispute arises about what has happened or what has been said. However, it may be appropriate to provide information in writing and by another method.

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24 Section 1 of the Mental Capacity Act 2005.

- 2.4.7 Service Police forces should ensure that communication is tailored to meet the individual needs of the complainant. They should take into account the complainant's or interested person's stated preference for the method of communication when providing them with information.

## **2.5 Complaints made by people under 18**

- 2.5.1 In many cases, a person under 18 who makes a complaint against someone serving with the Service Police will be supported by a parent, guardian or other appropriate adult. In situations where a person under 18 makes a complaint alone, the Service Police force should still take action on their complaint. They should ask the young person whether they would like their parent or guardian to be notified, and their wishes should be followed. They should also consider whether an alternative form of support should be offered, such as an advocate.
- 2.5.2 If the young person is under 16, they should not normally need to provide written permission for a parent or guardian to act for them in this manner. However, if it becomes apparent that the young person's views about pursuing a complaint are at odds with those of their parent, guardian or advocate, the young person's views should be taken into account, giving due weight to their age and maturity.
- 2.5.3 When a young person makes a complaint, the Service Police force is responsible for ensuring that the young person understands the process and the potential outcomes. Young people should receive support not only when they first access the Service Police complaints system, but throughout the handling of their complaint.

# 3 Principles of reasonable and proportionate handling

## 3.1 The importance of reasonable and proportionate handling

- 3.1.1 The reasonable and proportionate handling of complaints and other matters is necessary to ensure both confidence in the complaints system and efficient and effective operation.
- 3.1.2 All complaints must be handled in a way that the Appropriate Authority considers to be reasonable and proportionate. While this chapter therefore refers to complaints, the principles outlined here should also be applied to the handling of recordable conduct matters and death or serious injury (DSI) matters, wherever possible.
- 3.1.3 When deciding how to handle a complaint and what steps are required to resolve it, the approach and the outcome must be reasonable and proportionate. This chapter explains what reasonable and proportionate handling means in the context of the Service Police complaints system.

## 3.2 What does 'reasonable and proportionate' mean?

- 3.2.1 This means doing what is appropriate in the circumstances, taking into account known facts and the context of the matter. It means weighing up the seriousness of the matter and its potential for learning, against the efficient use of policing resources, to determine the extent and nature of the matter's handling and outcome. This should involve considering the nature of the incident, any actual or potential impact on individuals, communities or the wider public, and the potential impact on confidence in the Service Police and the complaints system. A reasonable and proportionate response includes providing a clear and evidence-based rationale for any decisions taken.

## 3.3 Principles of reasonable and proportionate handling

- 3.3.1 **Customer service focus** – Delivering good customer service should be a central aspect of complaint handling. All parties involved in a complaint should be treated with consideration throughout the process.
- 3.3.2 Complaint handlers should explore the complainant's perspective and must fully understand the complaint, why the complainant has made it, and the outcome they are seeking. Complainants should feel confident that their complaint is understood properly. At the outset, they must be contacted and have the opportunity to give their views about how their complaint should be handled. Exploring the complaint fully with a complainant and explaining the remit of the Service Police complaints system can help set boundaries and ensure that no element of the complaint is accidentally missed.

- 3.3.3 It is important that expectations are managed throughout the process, so that the complainant knows the type of response they should expect to receive and the issues it will address. If, and when, it becomes apparent that the outcome of a complaint is unlikely to meet the complainant's expectations, the complaint handler should explain the reasons for this to the complainant.
- 3.3.4 Complainants, and any person complained about, should be able to follow the progress of the complaint. Communication should be as open and transparent as possible (taking into account any legal constraints) and tailored to meet individual needs from the outset.
- 3.3.5 It is also important, for all those involved, that complaints are handled in a timely manner.
- 3.3.6 The response a complainant receives should not be defensive. It should address all aspects of the complaint that have been agreed with the complainant, acknowledge any potential or actual harm caused (and the impact of this), and willingly demonstrate organisational accountability where appropriate.
- 3.3.7 **Case-by-case approach** – What is reasonable and proportionate must be assessed on a case-by-case basis.
- 3.3.8 The way a complaint is handled should be tailored to the circumstances of the complaint as far as possible.
- 3.3.9 Complaint handling should take account of the seriousness of the allegation, any actual or potential impact or harm caused, and the potential for learning and improvement. The more serious a complaint, the greater the need for accountability and scrutiny. More serious complaints may require more wide-ranging enquiries or efforts to verify information, where it otherwise may not be considered reasonable or proportionate in the circumstances.
- 3.3.10 Complaint handlers should also do all of the following:
- consider how best to communicate with all those involved in the complaint, including any reasonable adjustments that might be required
  - consider whether it would be helpful for the complaint to be dealt with by a specific person because of the subject matter, circumstances or their expertise – where the subject matter is particularly serious or sensitive, the complaint handler should also consider the entitlements set out in the Armed Forces Code of Practice for Victims of Crime, such as offering the opportunity to have a person of the same sex handle certain types of complaint
  - explore what actions might provide the complainant with a suitable remedy or otherwise address their concerns, taking into account the circumstances of the complaint and any legislative requirements, including the requirements of the Human Rights Act 1998, which incorporates the European Convention on Human Rights into UK law

- 3.3.11 Sometimes it will be appropriate to take no action to resolve a complaint. The complaint handler should provide the complainant with a sound rationale about why they intend to take no action, and advise the complainant of their right to have the outcome reviewed. No complaint should receive no response at all.
- 3.3.12 **Consider the wider context** – Complaint handlers should take a holistic approach to handling complaints and act on any wider concerns. They should be alert to opportunities to identify learning and improve service delivery.
- 3.3.13 The handling of a complaint should not be limited strictly to the issues a complainant has raised, if other areas of concern are identified. Sometimes a complaint may give rise to additional concerns or may indicate opportunities for wider learning or improvement. For example, it may reveal an aspect of poor service or treatment that the complainant was not aware of, or indicate a systemic or organisational failing. If such concerns or opportunities for learning are identified, they should be documented and explored in addition to responding to the original points of the complaint.
- 3.3.14 In addition, there may be particular public interest in a complaint about the application of new Service Police powers or techniques, or areas that are known to be controversial. Such complaints may provide an opportunity for wider learning or identification of best practice.
- 3.3.15 Any learning identified as a result of a complaint should be shared with the complainant, including details of how, and when, any improvements will be implemented.
- 3.3.16 **Fair and effective decisions** – Actions taken to handle a complaint should be, and should be seen to be, just and any conclusions drawn should be capable of withstanding appropriate scrutiny.
- 3.3.17 Complaint handlers should consider the fairness of their actions on all those involved in a complaint. They should ensure that the decisions they make are all of the following:
- impartial, free from bias (or the appearance of bias) or discrimination, having considered the perspectives provided by all parties
  - logical and justifiable with reference to the relevant available evidence
  - not placing undue weight on any given consideration
  - accompanied by a clear, evidence-based rationale
- 3.3.18 To be fair and effective, decisions also need to be transparent and timely. Wherever possible (subject to exemptions) they should be communicated to all those involved and supported by a clear rationale that allows everyone to understand them.
- 3.3.19 Complaint handlers should promote the fair and equal treatment of all parties. To do this, where a complaint is about a specific incident, or the actions of a specific person, those involved should have the opportunity and be encouraged, where appropriate, to participate throughout the handling of a complaint (not just where required by the legislation) and to discuss their views and any concerns.



## 4 Learning and improvement

### 4.1 Building a learning culture

- 4.1.1 One of the most important functions of the Service Police complaints system is to support individuals and the Service Police forces to reflect on and learn from complaints and incidents where something has gone wrong. It provides a vital source of evidence to help senior officers and local Service Policing bodies drive improvements in Service Policing.
- 4.1.2 A strong learning culture is extremely important to securing and maintaining confidence in Service Police forces. Senior officers, local policing bodies and all those serving with the Service Police must be open to considering where something could have been done better. A service that values learning does all of the following:
- embraces a culture of continuous improvement and reflection, actively looking for opportunities to develop and improve practice before a weakness, failing or gap is identified
  - encourages innovation and is open to exploring new and different ways of working
  - learns from experience, retains a corporate memory of what worked and what did not, is open to learning from others and shares their experience with others
  - identifies and shares best practice
  - actively seeks feedback from service users and staff at all levels to help improve practice, and tells people how their input was used
- 4.1.3 Senior officers and Service Policing bodies must make sure that information relating to complaints, conduct matters and death or serious injury (DSI) matters is used as a source of learning to make improvements where appropriate.

### 4.2 Learning from complaints, investigations and reviews

- 4.2.1 The Service Police Complaints Commissioner (SPCC) expects Service Police forces and Service Policing bodies to routinely consider whether any learning can be taken from each complaint, investigation or review.
- 4.2.2 Senior officers and local Service Policing bodies should do all of the following:
- ensure that there are robust procedures in place for identifying and acting on learning
  - develop terms of reference or include service level agreements that prompt those dealing with complaints, investigations and reviews to consider whether there are any opportunities to improve policy or practice



- ensure that action is taken to implement any learning, including any SPCC learning recommendations, as swiftly as possible – where organisational learning is identified during the course of handling a matter, it is not always necessary to wait until the end before implementing any changes and improvements
- ensure that there are systems in place to record, monitor and report on the progress of action taken as a result of any learning
- ensure that any learning or good practice is shared with Service Police officers and staff locally, where relevant, and incorporated into training and guidance as appropriate
- ensure that any learning or good practice is shared with other forces or partners working nationally, where appropriate
- ensure that key stakeholders are informed when significant changes to policies or practice have occurred as a result of learning

4.2.3 The SPCC expects Service Police forces to monitor their force's performance in this regard.

4.2.4 The SPCC may make recommendations where it identifies a potential area of organisational learning for a Service Police force or another body. For example, it may recommend a change to policy, guidance, training or practice where this may improve Service Policing practice or prevent a recurrence of something that went wrong.

### **4.3 Learning from wider sources**

4.3.1 Aside from the Service Police complaints system, there are a number of other sources of information which should be considered. These sources include:

- SPCC research and learning publications
- His Majesty's Inspectorate of Constabulary and Fire and Rescue Services inspections and reports
- feedback provided by members of the public or Service Police officers/staff
- civil proceedings
- reviews commissioned by the Service Police force
- reviews or research undertaken by other statutory bodies, independent experts, academics, community and voluntary sector groups, or specialist interest organisations
- learning from inquests, including prevention of future death reports
- serious case reviews, domestic homicide reviews or other reviews commissioned to identify learning
- local and/or national statistical data

## 4.4 Using data to inform improvement

4.4.1 In addition to learning from individual cases, senior officers should use wider national data from the Service Police complaints system to monitor their performance and to identify opportunities for learning and improvement.<sup>25</sup>

4.4.2 Data collected through the SPCC's performance framework is a key source of information for Service Police forces and local Service Policing bodies. The SPCC uses the performance framework to collate data on complaints. Senior officers are required to provide the SPCC with this data.

4.4.3 Senior officers should make use of data from the performance framework and other sources to do all of the following:

- compare their performance to others
- understand what good performance looks like and identify opportunities to improve performance
- understand how different parts of the complaints system are performing
- report on performance
- identify good practice in complaints handling or other areas, which could be built on and/or shared more widely
- identify themes in complaints – including within teams, divisions, or geographical areas – which might indicate a need to change a process or address a gap in policy or training
- identify individuals, groups or communities who are under-represented in the complaints system, highlighting a need to raise awareness, develop confidence or improve access
- identify recurring issues or patterns in issues affecting particular individuals, groups or communities, which may require Service Police forces or local Service Policing bodies to look more closely to identify the root causes of complaints and concerns, and take appropriate action to help rebuild trust and confidence

4.4.4 The SPCC encourages senior officers to seek information that provides insight into how individuals involved in complaints, investigations and reviews found the experience. This type of feedback may help identify opportunities to improve handling.

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25 Service Police forces are under an obligation to handle data in compliance with data protection legislation, including the principle of data minimisation. Therefore, they may wish to consider whether data used for these purposes can be anonymised.

- 4.4.5 Senior officers may also wish to collate data on the performance of the complaints system in their force, and enhance opportunities for learning, by performing quality audits. File sampling can be a useful way to identify issues, whether proper procedures are being followed and whether matters are being dealt with reasonably and proportionately.

## **4.5 Communicating the impact of learning**

- 4.5.1 Where improvements to policy or practice are implemented, senior officers should communicate the changes to those involved in a complaint, investigation or review.
- 4.5.2 Senior officers should also publicise improvements, where appropriate, to any groups and communities likely to be interested in the changes.
- 4.5.3 Seeing evidence of improving policy or practice can play an important part in helping to build confidence in Service Policing and the complaints system where this may have been damaged.

# 2

## **Part 2: Initial handling of complaints**

# 5 Guidance for complainants

## 5.1 Definition of a complaint

- 5.1.1 A complaint is defined as any expression of dissatisfaction with a Service Police force or a member of a Service Police force which is expressed by a person or on behalf of another person.<sup>26</sup>

## 5.2 What can be complained about?

- 5.2.1 A complaint can be made about any matter which has had an adverse effect on the person making the complaint. A person will be considered to have been adversely affected if they have suffered any form of loss, damage, distress or inconvenience as a result of the matter complained about, or if they have been put in danger or otherwise unduly put at risk of being adversely affected.
- 5.2.2 A person will not be considered to have been adversely affected solely by virtue of having seen or heard about the conduct or its effects (for example, in the news or being told about it by a third party), unless they either:
- were physically present or sufficiently nearby when the conduct took place, and saw or heard the conduct or its effects
  - were adversely affected due to the fact that they knew the person directly affected by the conduct before it happened
- 5.2.3 A complaint can be made about the conduct of a member of a Service Police force, or about a much wider range of issues including the service provided by the Service Police force as an organisation.
- 5.2.4 There is no bar on complaints being made about the conduct of a person who is no longer a member of the Service Police, as long as it concerns matters that occurred while they were serving.
- 5.2.5 **In addition, a complaint may concern the actions of a member of the Service Police who was off-duty at the time of the incident.** However, the Service Police complaints system will not cover complaints about the conduct of a person who is serving in another capacity which has no relevance to their role as a member of the Service Police.<sup>27</sup> The Service Police Complaints Commissioner (SPCC) can give advice on where the conduct of a member of the Service Police in another capacity has the potential to undermine the confidence in the Service Police.

<sup>26</sup> See Regulation 9.

<sup>27</sup> See Regulation 8.

## 5.3 What cannot be complained about

- 5.3.1 A person cannot make a complaint if they are a member of the same Service Police force or were on duty in their capacity as a member of the Service Police at the time the matter allegedly took place.<sup>28</sup> There are internal processes that enable a member of the Service Police force to raise concerns. If those concerns relate to the conduct of another member of the Service Police, the matter will be taken forward as a conduct matter, and the procedures for conduct matters would apply.
- 5.3.2 Any complaint that is either made or could be made under the Service Police complaints system is now an excluded matter under the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 and should not be raised as a Service complaint, except where it falls within paragraph 2 of the Schedule to the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015.
- 5.3.3 If a 'statement of complaint' is submitted under JSP 831 about an excluded matter, the Specified Officer within the single Service Secretariat Central Admissibility Team should inform the complainant in writing, setting out the reasons why the matter is not admissible as a Service complaint.<sup>29</sup> The Specified Officer must also advise the complainant that they will need to make the complaint to the Appropriate Authority to be handled as a Service Police complaint.
- 5.3.4 Specified Officers will need to, as part of their admissibility assessment, determine whether any remaining parts of a complaint that includes a number of matters can be treated as an admissible Service complaint.

## 5.4 How to make a complaint

- 5.4.1 Complaints can be made by contacting the Service Police force unit concerned. They may resolve the matter locally or pass it onto their Professional Standards Department.
- 5.4.2 Alternatively, complaints can be made to the Professional Standards Department for that Service Police force (see Annex K for contact details), or directly to the SPCC. However, if the complaint is made to the SPCC, it will be directed to the Appropriate Authority unless there are exceptional circumstances that justify it not being sent directly to the Service Police force.<sup>30</sup> The Appropriate Authority will then assess the complaint and contact the complainant about how it will be handled. The SPCC will not be involved with the initial assessment of the complaint.
- 5.4.3 A complaint does not have to be made in writing, nor must it explicitly state that it is a complaint for it to be considered as one.<sup>31</sup> However, complainants will be encouraged to use the **Service Police complaints form**, which can be found on the SPCC's website at: [www.thespcc.org.uk/submit-complaint](http://www.thespcc.org.uk/submit-complaint).

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28 See Regulation 9(10).

29 A Specified Officer is someone is appointed by the Defence Council to decide whether a statement of complaint is admissible as a valid Service complaint.

30 See Regulation 12(2).

31 Regulation 9(1) states "any expression of dissatisfaction...which is expressed (whether in writing or otherwise)".

## 5.5 Who can make a complaint?

- 5.5.1 Who can make a complaint is dependent on whether the complaint is about the conduct of a person serving as a member of a Service Police force, or if the complaint is about another matter.
- 5.5.2 Where the complaint relates to conduct of a person serving as a member of a Service Police force, a complainant can be a member of the Armed Forces or a member of the public who either:
- a. claims to be the person who experienced the conduct
  - b. claims to have been adversely affected by the conduct
  - c. claims to have witnessed the conduct<sup>32</sup>
  - d. is acting on behalf of someone who satisfies one of the above three criteria
- 5.5.3 Where the complaint is about another matter (for example, the service provided by the Service Police force as an organisation), a complainant can be a member of the Armed Forces or a member of the public who either:
- a. was adversely affected by the matter complained about
  - b. is acting on behalf of someone who was adversely affected by the matter complained about
- 5.5.4 A person can appoint someone to act on their behalf when making a complaint – for example, a family member, friend or legal representative. They must give their appointed person written consent to act on their behalf.

## 5.6 When can a complaint be made?

- 5.6.1 **Complaints about events that occurred before the Regulations came into force (19 June 2023) will not be handled under the statutory Service Police complaints system.**<sup>33</sup> Instead, these complaints will continue to be handled under the non-statutory arrangements established by the Provost Marshals.
- 5.6.2 There is no time limit on making a complaint, but it is best to do it as quickly as possible after the incident has occurred. The reasonable and proportionate response to an older complaint may be necessarily limited as the passage of time means that some evidence is no longer available (although this would be balanced against other factors such as the nature and seriousness of the matter).

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32 Regulation 9(3)(c) states that a person can be a witness to the conduct if, and only if:

- (i) they have acquired their knowledge of the conduct in a manner which would make them a competent witness capable of giving admissible evidence in proceedings before a Court Martial
- (ii) they have in their control anything that could be used as admissible evidence in such proceedings

33 See Regulation 8(1).

- 5.6.3 If a complaint is made more than 12 months after the incident, it may help to provide an explanation for the delay. But this does not guarantee that the complaint will be investigated.

## **5.7 Complaints and conduct matters relating to former members of a Service Police force**

- 5.7.1 Complaints and conduct matters may relate to a member of a Service Police force who has left the force since the time of the alleged conduct. In such a case, the provisions of Part 3 of the Regulations apply, subject to the modifications set out in Regulation 10.

## **5.8 What happens to a complaint after it is made?**

- 5.8.1 Once a complaint is received by the Appropriate Authority responsible for the initial handling of the complaint, they will log and assess it. The Appropriate Authority will then contact the complainant to discuss how it will be handled as a complainant's dissatisfaction may not always be captured fully at the time the complaint was initially made.
- 5.8.2 Complaint handlers will explore with the complainant why they feel they have to make a complaint, and seek to understand what outcome the complainant wants. Depending on the nature of the complaint, it can either be dealt with informally or have to be formally recorded. This will be explained to the complainant.
- 5.8.3 The Appropriate Authority will also consider whether the complaint should be referred to the SPCC. If it does not need to be, it will be handled by the relevant Service Police force.
- 5.8.4 The flowchart at Annex C provides an overview of the Service Police complaints process.

## **5.9 How to apply for a review**

- 5.9.1 If a complainant is unhappy with the way a complaint was handled by the Service Police, or with the final outcome, they can apply for a review.
- 5.9.2 Where a complaint has been recorded, the complainant has a right to apply for a review of the outcome, whether it was dealt with in other ways or locally investigated.<sup>34, 35</sup> The review body will consider whether the outcome is reasonable and proportionate. If the outcome is not, the review body will uphold the review. This applies whether the complaint has been investigated or handled in another way.

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34 See Regulation 18, and Regulation 2(5) which identifies whether the relevant review body for a particular matter is the Commissioner, the Defence Council or the Board for the relevant Service Police force.

35 See Regulation 64.



- 5.9.3 An application for a review must be made in writing (the application for review form can be used) and must state all of the following:<sup>36</sup>
- a. the details of the complaint
  - b. the date on which the complaint was made
  - c. the name of the Appropriate Authority whose decision is the subject of the application
  - d. the date on which the information mentioned in Regulation 78(10)(c) was provided to the complainant
- 5.9.4 A complainant has 28 days to apply for a review. This means the relevant review body must receive the application within 28 days of the date of the letter explaining the outcome of the complaint. For example, if the letter is dated 1 April, the relevant review body must receive the review request by 29 April.
- 5.9.5 However, the relevant review body may extend the period (including retrospectively) where it is satisfied that, because of the special circumstances of the case, it is just to do so. For example, a complainant could be deployed overseas on operations when the letter informing them of the outcome is sent.
- 5.9.6 For more information on reviews, see Chapter 17.

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<sup>36</sup> See Regulation 65.

## 6 Initial handling and recording of complaints

### 6.1 Initial considerations and actions on receipt of a complaint

- 6.1.1 This section outlines initial considerations and actions on receipt of a complaint, including the definition of a complaint and what action can be taken before recording a complaint. A flowchart is also provided at Annex D.
- 6.1.2 Information must be captured about all matters that meet the definition of a complaint (see the glossary at Annex A) which are received by, or are brought to the attention of, a Provost Marshal, a single Service Board, the Defence Council or the Service Police Complaints Commissioner (SPCC), as an expression of dissatisfaction with a Service Police force.<sup>37</sup>
- 6.1.3 Information regarding the complaint must also be logged in a way that can be extracted and reported on and be made readily available on request to the SPCC. It is important to capture this data to get feedback about Service Policing and use it to identify issues, trends and opportunities for learning and improvement.

### 6.2 Action on receipt of a complaint – Directing complaints to the correct body

- 6.2.1 Where a complaint is made to a body which is not the Appropriate Authority for the complaint, it must notify the Appropriate Authority.<sup>38, 39</sup> For example, if the complaint was mistakenly sent to the Royal Navy Police and should have been sent to the Defence Serious Crime Command (DSCC), the Royal Navy Police must forward the complaint to the DSCC and notify the complainant about doing so. This includes complaints that are made directly to the SPCC, which will be redirected to the Appropriate Authority.<sup>40</sup>
- 6.2.2 The complaint must be forwarded to the Appropriate Authority in its entirety. This transparency is important. In some cases, for example, where a complaint contains sensitive data and the complainant has intentionally sent it to a particular body, or they have expressed concern about sensitive information in their complaint being shared, consideration should be given to notifying them in advance that this will happen.

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37 Here Service Police force includes all three single Service Police forces and the DSCC.

38 Here Service Police force includes all three single Service Police forces and the DSCC.

39 See Regulation 12. The term 'body' or 'bodies' here refers to a Provost Marshal, a single Service Board, Defence Council or the Commissioner.

40 There are exceptions to this, as Regulation 9(2) states that the Commissioner does not need to give that notification if they consider that there are exceptional circumstances that justify it not being given.

- 6.2.3 However, there is no requirement to seek consent from the complainant to forward a complaint to the Appropriate Authority.
- 6.2.4 Sometimes a complaint may involve more than one Appropriate Authority. For example, it may relate to additional Service Police forces, or involve allegations directed at both the Provost Marshal and other personnel in the same Service Police force. In these circumstances, the relevant parts of the complaint must be sent to the correct body to deal with.

### **6.3 Initial handling by the relevant body**

- 6.3.1 From the point a complaint is received, it is important to acknowledge that the complainant has concerns, and to take prompt, effective steps to address the matter. The way a complaint is dealt with at the outset can influence a complainant's confidence in, and participation with, the Service Police complaints system. For this reason, Provost Marshals are responsible for ensuring that all members of the Service Police are aware of, and able to advise individuals on, how to make a complaint.
- 6.3.2 Once a complaint is received by the body responsible for the initial handling, it should be logged.
- 6.3.3 Where the Defence Council, a single Service Board or Provost Marshal either determines or receives notification that it is the relevant authority, it must contact the complainant to seek their views on how the complaint should be handled.<sup>41</sup> This should be done as soon as possible after receiving the complaint.
- 6.3.4 Any complaint that must be referred by an Appropriate Authority to the SPCC may be recorded before contacting the complainant. However, attempts to contact the complainant should not delay the referral of a complaint to the SPCC.
- 6.3.5 The complainant should be provided with the name and contact details of the person who will initially be handling their complaint, as soon as this is identified.
- 6.3.6 Complaint handlers should consider whether a complainant has any additional needs to enable them to participate effectively in the process and should, where practicable, make any reasonable adjustments.

### **6.4 Understanding the complaint**

- 6.4.1 It is crucial to ensure that a complaint is properly understood, not only as it impacts on whether it must be recorded, but also so the concerns raised can be properly considered and addressed.
- 6.4.2 Complaint handlers should explore the nature of the complaint with the complainant, to ensure it is understood in its entirety. A complainant's dissatisfaction may not always be captured fully at the time of their initial contact, particularly if they are vulnerable or have difficulty articulating the nature of their concerns and the impact of them. Certain types of complaints may require more exploration than

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<sup>41</sup> See Regulation 12.

others. For example, where a complainant includes allegations that may amount to discrimination, complaint handlers should explore with the complainant why they feel that they have been discriminated against.

- 6.4.3 Where a complaint is considered to fall outside of the Service Police complaints system, the complainant will be informed of the reasons why. For example, it may be unclear how the concerns raised relate to Service Policing or whether the person making the complaint is eligible to make a complaint under the Regulations. In these situations, the Service Police force should consider clarifying the nature and circumstances of the complaint with the complainant.
- 6.4.4 If it appears that the concern may be more appropriately raised as a Service complaint which falls within the oversight of the Service Complaints Ombudsman, the Service Police force will also need to inform the complainant.

## **6.5 Explaining what the complainant can expect**

- 6.5.1 Complaint handlers should be open and transparent in managing a complainant's expectations if they appear to want something that is either not possible or highly unlikely to be reasonable or proportionate to provide.
- 6.5.2 Complainants must be informed whether their complaint has been formally recorded or resolved informally. However, complaint handlers should be mindful of the terms they use when discussing the handling of a complaint. For example, referring to the complaint solely in terms of being handled under or outside of the requirements of Part 3 of the Regulations may be confusing. The Service Police complaints system may be more effectively and clearly explained to complainants by informing them of the steps involved in the process and ensuring that they understand what this means for their complaint.

## **6.6 The preserving of evidence in relation to a complaint**

- 6.6.1 The Appropriate Authority must ensure all steps are appropriate both initially and from time to time after that, for obtaining and preserving evidence relating to any conduct complaint.<sup>42</sup>
- 6.6.2 The Appropriate Authority must also comply with any directions made by the SPCC in relation to the performance of this duty.

## **6.7 Handling complaints informally**

- 6.7.1 Non-recorded complaints can be dealt with informally outside the regulatory framework, but must still be handled appropriately and resolved to the complainant's satisfaction.<sup>43</sup>

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<sup>42</sup> See Regulation 11.

<sup>43</sup> This refers to a complaint being outside the requirements of Part 3 of the Regulations. See Regulation 12(9).

6.7.2 Exceptions to this include all of the following where:

- a. the matters which form the basis of the complaint meet the criteria for recording (as set out in the Regulations)
- b. the Service Police force decides it is appropriate to record the complaint
- c. the complainant wants the complaint to be recorded at any stage
- d. the complainant is dissatisfied following informal handling and wishes to pursue the matter

6.7.3 Handling a complaint informally provides an opportunity to address promptly the concerns a complainant has raised. Some complaints do not require detailed enquiries. For example, the complainant may only want an explanation, or for their concerns to be noted or passed on. Prompt handling may be the most efficient, effective and beneficial way to resolve the complaint. It can assure the complainant that their concerns have been listened to and addressed, while potentially providing a learning opportunity for the Service Police force (and, if appropriate, any individuals involved).

6.7.4 However, this does not mean that a complaint should be resolved immediately if the complaint handler believes a short delay will help to gather the information needed to resolve the complaint. Nor does it prevent additional steps being taken to resolve a matter following an initially unsuccessful attempt, if the complainant agrees those steps are necessary to resolve the matter to their satisfaction. If at any point it appears that a resolution cannot be achieved in a timely manner or without substantial additional steps, this is likely to indicate the matter should be recorded (given formal status and handled in accordance with the Regulations). The complainant must be kept properly informed of the complaint's progress, subject to certain exceptions (see Chapter 10, paragraph 10.8).

6.7.5 The key consideration, when handling a complaint informally is whether a course of action is appropriate and whether it will be an effective response which will satisfy the complainant. Actions could include include any of the following:

- a. providing information and an explanation – either by telephone or in writing
- b. providing an update on the complainant's outstanding matters
- c. answering questions that the complainant has
- d. organising the return of seized property
- e. offering an apology for poor service
- f. confirming that steps have been taken to prevent an error occurring again, which may include signposting the complainant to appropriate processes
- g. logging the complainant's concerns for consideration when a policy, procedure or update to guidance is next due for a review

- 6.7.6 A complaint will not be suitable for handling informally where accounts need to be taken from members of the Service Police force, or where other investigative steps are needed to provide a satisfactory outcome.
- 6.7.7 The conclusion of handling a complaint informally must be communicated in writing to the complainant within five working days of the outcome being determined. It should be discussed with the complainant unless it is not appropriate or possible to do so.
- 6.7.8 If a complainant is dissatisfied with the way their complaint has been handled, complaint handlers should remind complainants that:
- a. they can ask for their complaint to be recorded
  - b. if it is recorded, they have a right to apply to have the outcome of their complaint reviewed (unless it is subject to a directed or independent investigation)
- 6.7.9 Where appropriate, the complainant's expectations of further action resulting from recording should be managed. However, complainants should not be dissuaded from requesting that their complaint be recorded if that is what they want.

## **6.8 When complaints must be recorded**

- 6.8.1 A complaint must be formally recorded and handled in accordance with the procedures set out in the Regulations, if at any point the person making the complaint wants it to be recorded or the Appropriate Authority considers it necessary. This applies even if previous attempts have been made to handle the complaint informally. Where a complainant's wishes are unclear, reasonable steps should be taken to clarify what they are.
- 6.8.2 The Appropriate Authorities must record any complaint that needs to be referred to the SPCC.
- 6.8.3 A complaint must also be formally recorded if it either:<sup>44</sup>
- a. is an allegation that the conduct or other matter resulted in death or serious injury
  - b. is an allegation that there has been conduct by a member of a Service Police force, which (if proved) might constitute the commission of a Service offence or would justify administrative action procedures (see the glossary at Annex A)
  - c. is about conduct or any other matter which, if proved, might have infringed a person's rights under Articles 2 or 3 of the European Convention on Human Rights (see the glossary at Annex A)
  - d. meets any of the mandatory referral criteria to the SPCC (see Chapter 9), or the SPCC uses their power to treat it as though it has been referred<sup>45</sup>

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<sup>44</sup> See Regulation 12(8).

<sup>45</sup> See Regulation 14.

- 6.8.4 These criteria must be assessed on the basis of the allegations, not on their apparent merit. No scoping is required before making this decision, except to ensure that the complainant's allegations are fully understood.
- 6.8.5 When considering whether it is appropriate to record a complaint which does not otherwise meet the criteria for recording, other factors to be considered include:
  - a. the extent and nature of enquiries required to address the complaint
  - b. whether the allegations include an alleged breach of any of the articles of the European Convention on Human Rights (other than Articles 2 and 3)
  - c. whether previous similar complaints have been recorded or logged (either about the same issue, or, where appropriate, about the same member of the Service Police or Service Police force)
- 6.8.6 Once it becomes apparent that a complaint must be recorded, it should be recorded as soon as possible. It is not necessary to wait to contact the complainant before making that decision. However, the complainant must still be contacted to discuss their complaint.
- 6.8.7 Complaints should be recorded in a format that can be easily accessed and inspected. Sufficient information should be recorded about each complaint so that actions and outcomes can be monitored and reported.
- 6.8.8 Complainants must be informed as soon as is practical that their complaint has been recorded and they should be given a copy of the record. A copy of the complaint must also be given to the person complained about (if any), unless doing so might prejudice an investigation or pending proceedings relating to a Service offence or would otherwise be contrary to the public interest.<sup>46</sup> This decision must be kept under regular review. Personal identities may be anonymised in the copy provided.

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<sup>46</sup> See Regulation 15.

# 3

## **Part 3: Handling complaints, recordable conduct matters, death or serious injury matters or super-complaints**



# 7 Death or serious injury matters

## 7.1 Definition of a death or serious injury matter

- 7.1.1 A death or serious injury (DSI) matter means **any circumstances** (other than those which are the subject of a complaint or which amount to a conduct matter) where a person has died or has sustained serious injury, and either:<sup>47</sup>
- a. that at the time of the DSI the person had been arrested by a member of a Service Police force and had not been released from that arrest or was otherwise detained in the custody of a member of a Service Police force<sup>48</sup>
  - b. that at or before the time of the DSI the person had direct or indirect contact with a member of a Service Police force who was performing their duties, and there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the DSI
- 7.1.2 A 'serious injury' means a fracture, a deep cut, a deep laceration, or an injury causing damage to an internal organ or the impairment of any bodily function.<sup>49</sup>
- 7.1.3 If a DSI occurs while a person is under arrest or otherwise detained in the custody of a member of the Service Police, this meets the definition of a DSI matter. In these circumstances, there does not need to be any indication of a causal link between the contact with a member of the Service Police and the DSI to meet the definition.
- 7.1.4 If a DSI occurs following direct or indirect contact with a member of the Service Police, and the person who died or was seriously injured was not under arrest or otherwise in the custody at the time, the Appropriate Authority will need to assess whether there is any indication that the contact may have caused or contributed to the DSI (for example, through action or inaction). If there is such an indication, this meets the definition of a DSI matter.

## 7.2 Recording and preserving of evidence in relation to a DSI matter

- 7.2.1 Where a DSI matter comes to the attention of the Appropriate Authority, they must record it.<sup>50</sup> There is a duty on the Appropriate Authority to take all appropriate and necessary steps to preserve evidence relating to a DSI matter which must be performed as soon as practicable.

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47 See Regulation 9(14) to (16).

48 This does not include a DSI in Service custody premises where there has been no contact with the Service Police (for example, sentenced by a Commanding Officer and taken directly to a facility).

49 See Regulation 2.

50 See Regulation 27: Handling of death and serious injury matters.

- 7.2.2 To ensure timeliness, Appropriate Authorities must have processes in place to identify and refer DSI matters without delay.<sup>51</sup> Therefore, all members of the Service Police who are likely to handle such matters need to be able to recognise circumstances that may constitute a DSI matter and know how and when to raise them through the appropriate channels.
- 7.2.3 DSI matters should be recorded as soon as practicable after they are identified. All DSI matters are mandatory referrals to the Service Police Complaints Commissioner.

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51 See Regulation 29. Reference to the Commissioner should be done without delay and no later than the end of the day following the day that the matter first comes to the attention of the Appropriate Authority.

## 8 Recordable conduct matters

### 8.1 Definition of a conduct matter

- 8.1.1 The term 'conduct matter' means any matter which is not, and has not been, the subject of a complaint, but where there is an indication (whether from the circumstances or otherwise) that a member of a Service Police force may have committed a Service offence, or behaved in a manner that would justify the initiation of administrative action procedures (see the glossary at Annex A).<sup>52</sup> This definition is distinct from the broader term 'conduct' in the Regulations, which includes acts, omissions, statements and decisions (whether actual, alleged or inferred).<sup>53</sup>
- 8.1.2 Where there are issues relating to the conduct of an individual, it is important that they are recognised and dealt with appropriately, even where no complaint is made.

### 8.2 Identifying conduct matters

- 8.2.1 **Appropriate Authorities should be proactive and alert to the potential for conduct matters to arise.** Identifying and appropriately dealing with issues ensures individual accountability. This helps to uphold high professional standards across the Service Police and maintain the trust and confidence of the Armed Forces community and the wider public.

### 8.3 Recording conduct matters arising in civil proceedings

- 8.3.1 The Regulations place a duty on Appropriate Authorities to identify and deal with conduct matters that come to their attention as a result of civil proceedings. Where an Appropriate Authority receives notification that civil proceedings relating to any matter have been brought or are likely to be brought, and those proceedings involve or would involve a conduct matter, they should make an initial assessment about whether any complaint has been made about the same conduct. If so, they should deal with that complaint in accordance with guidance on handling complaints.
- 8.3.2 **Where an Appropriate Authority determines that the matter needs referring to the Service Police Complaints Commissioner (SPCC), it must be referred and recorded.** However, where the Appropriate Authority is satisfied that the matter in question is already being dealt with by means of administrative procedure or disciplinary proceedings against the person whom the conduct relates to, then there is no need to record any conduct matter.

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<sup>52</sup> See Regulation 9(4).

<sup>53</sup> See Regulation 2(1).

## 8.4 Recording conduct matters

- 8.4.1 When a conduct matter comes to the attention of the Appropriate Authority other than by civil proceedings, it must consider whether it is a conduct matter that must, or may, be formally recorded.<sup>54</sup>
- 8.4.2 Recordable conduct matters should be recorded as soon as practicable after they have come to light. A conduct matter should still be recorded even if there is a lengthy period of time between the events occurring and the matter coming to light.<sup>55</sup>
- 8.4.3 Where the conduct matter has been recorded, but there is no requirement to refer it to the SPCC, the Appropriate Authority may decide how to handle the matter. Where the SPCC has decided to treat a conduct matter as referred, the conduct matter must be recorded.<sup>56</sup>
- 8.4.4 The process for considering whether it is a conduct matter is outlined in the flowchart at Annex E.

## 8.5 What is meant by recordable?

- 8.5.1 A matter is recordable if it involves allegations of conduct that (assuming it to have taken place):<sup>57</sup>
- a. appears to have resulted in the death or serious injury of any person
  - b. has adversely affected any person
  - c. meets any of the following criteria:
    - i. serious assault (see definitions of referral criteria at Annex B)
    - ii. a serious sexual offence (see definitions of referral criteria at Annex B)
    - iii. serious corruption including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship (see definitions of referral criteria at Annex B)
    - iv. a Service offence or behaviour which is liable to lead to initiation of administrative action procedures (see the glossary at Annex A) and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status (see definitions of referral criteria at Annex B)
    - v. a relevant Service offence (see the glossary at Annex A)

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54 See Regulation 22.

55 Note that this only applies to matters that occur on or after the Regulations came into force (19 June 2023).

56 See Regulation 25.

57 See Regulation 22(2).

- vi. conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved
- vii. conduct of a Provost Marshal
- viii. conduct which is alleged to have taken place in the same incident as one in which the conduct within points (i) to (v) is alleged

8.5.2 Conduct matters may be 'repetitious' where they are being or have already been dealt with. In order to ascertain whether a matter is repetitious, it is necessary to consider whether it concerns the same conduct as a previous complaint or recorded conduct matter, and whether:

- a. a member of the Service Police force may have committed a Service offence or behaved in a way which would justify the initiation of administrative action procedures
- b. there is any fresh substantive evidence, which was not reasonably available at the time the previous complaint was made or previous conduct matter was recorded
- c. the previous complaint or conduct matter has been, or is being, investigated or (in the case of a complaint) otherwise handled in accordance with the Regulations<sup>58</sup>

8.5.3 In addition, if the Appropriate Authority is satisfied that the matter has been or is already being dealt with by disciplinary proceedings or administrative action, there is no requirement to record the matter.

8.5.4 If none of these criteria apply, the Appropriate Authority may record the conduct matter and deal with it as it deems appropriate, with no requirement to refer it to the SPCC.

## 8.6 What is meant by 'must or should be referred'?

8.6.1 In determining whether a matter must or should be referred, any of the following considerations apply:

- a. the matter relates to any incident or circumstances in which any person has died or suffered serious injury
- b. the matter meets any of the mandatory criteria for referral to the SPCC
- c. the gravity of the conduct matter or any exceptional circumstances make it appropriate to refer the matter to the SPCC voluntarily either by the Appropriate Authority
- d. the Appropriate Authority has been notified by the SPCC that it is required to refer the matter – due to the SPCC using their power to treat matter as having been referred<sup>59</sup>

<sup>58</sup> See Regulations 22(5) and 21(6).

<sup>59</sup> See Regulation 24: Reference of conduct matters to the Commissioner.

8.6.2 However, a conduct matter that has been referred to the SPCC previously (or that the SPCC has treated as having been referred) should not be referred again, unless the SPCC directs the Appropriate Authority to do so, or consents for the referral to be made. Therefore, a conduct matter that has been referred previously does not meet the definition of 'must or should be referred'.

8.6.3 For information on the referral of conduct matters, see Chapter 9.

## **8.7 Conduct matters involving allegations of discrimination**

8.7.1 When considering whether conduct matters involving allegations of discrimination should be recorded, Appropriate Authorities will need to consider the gravity of the alleged conduct. Where it is an aggregating factor in terms of a Service offence, it must be referred to the SPCC.

## 9 Referrals

### 9.1 Complaints that must be referred to the Service Police Complaints Commissioner (SPCC)

9.1.1 Appropriate Authorities must refer to the SPCC complaints which fulfil any of the following criteria:<sup>60</sup>

- a. the complaint alleges that the conduct resulted in a death or serious injury (DSI)
  - b. a complaint not within (a) which is any of the following:
    - i. a serious assault
    - ii. a serious sexual assault
    - iii. serious corruption
    - iv. a Service offence or behaviour liable to lead to administrative action and aggravated by discriminatory behaviour
    - v. a relevant Service offence (see the glossary at Annex A)
  - c. any complaint arising from the same incident in which conduct falling within (a) or (b) is alleged
  - d. any complaint not within (a), (b) or (c) but which relates to the conduct of a Provost Marshal, and the Appropriate Authority cannot satisfy itself that the conduct would justify administrative action (see the glossary at Annex A)
  - e. the SPCC notifies the Appropriate Authority to refer the matter – however, a complaint that has been referred to the SPCC previously or that the SPCC has treated as having been referred cannot be referred again unless the SPCC directs the Appropriate Authority to do so, or consents for the referral to be made<sup>61</sup>
- 9.1.2 Appropriate Authorities may also refer a complaint where the gravity of the matter or where exceptional circumstances mean that it is appropriate to do so.

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<sup>60</sup> Regulation 13 sets out the criteria where complaints must be referred to the Commissioner.

<sup>61</sup> Regulation 13(9).

## 9.2 Conduct matters that must be referred to the SPCC

9.2.1 Appropriate Authorities must refer to the SPCC any recordable conduct matter which falls under the following:<sup>62</sup>

- a. any incident or circumstances involving a DSI
- b. a serious assault (see definition of referral criteria at Annex B)
- c. a serious sexual assault (see definition of referral criteria at Annex B)
- d. serious corruption (see definition of referral criteria at Annex B)
- e. a Service offence or behaviour liable to lead to administrative action and aggravated by discriminatory behaviour (see definition of referral criteria at Annex B)
- f. a relevant Service offence (see the glossary at Annex A)
- g. conduct of a Provost Marshal
- h. conduct which is alleged to have taken place in (b) to (f)
- i. the SPCC notifies the Appropriate Authority to refer the matter

9.2.2 However, a conduct matter that has been referred to the SPCC previously or that the SPCC has treated as having been referred cannot be referred again, unless the SPCC directs the Appropriate Authority to do so, or consents for the referral to be made.<sup>63</sup>

9.2.3 Appropriate Authorities may refer a conduct matter where the gravity of the matter or exceptional circumstances make it appropriate to do so.

## 9.3 Referral of DSI matters

9.3.1 Appropriate Authorities must refer all DSI matters to the SPCC.<sup>64</sup>

9.3.2 However, a DSI matter that has been referred to the SPCC previously or that the SPCC has treated as having been referred cannot be referred again unless the SPCC directs the Appropriate Authority to do so, or consents for the referral to be made.<sup>65</sup>

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62 Regulation 24 sets out the criteria where conduct matters must be referred to the Commissioner.

63 Regulation 24(7).

64 Regulation 27.

65 Regulation 29(3).



## 9.4 Voluntary referrals

- 9.4.1 Appropriate Authorities have the option to voluntarily refer complaints or recordable conduct matters that do not have to be referred. This is where the gravity of the subject matter or exceptional circumstances justify referral. These 'voluntary referral' matters may, for example, have:
- a. a significant impact on **confidence in the Service Police** and in the wider Service Justice System
  - b. circumstances where **a person is injured** but the matter is not serious enough to be a DSI matter and otherwise must not be referred, but there might be something in the circumstances that warrants referral
  - c. a need for **independent involvement** in the investigation

## 9.5 SPCC power to treat matters as having been referred

- 9.5.1 The SPCC can treat any complaint, conduct matter or DSI matter as having been referred, even if a referral has not been received and the matter has not been recorded.<sup>66, 67, 68</sup>
- 9.5.2 This power enables the SPCC to consider the matter for the purposes of determining whether an investigation is necessary and making a mode of investigation decision without receiving a referral from the Appropriate Authority, irrespective of whether a matter has been recorded.
- 9.5.3 On treating a matter as having been referred, the SPCC must notify:
- a. the Appropriate Authority
  - b. the complainant (where there is one)
  - c. the person complained about or whose conduct the matter relates to (except in a case where to do so might prejudice an investigation)
- 9.5.4 Where an Appropriate Authority receives notification that a matter has been treated as referred, it must record the matter if it has not already done so. The Appropriate Authority should provide to the SPCC, as soon as possible after the notification, all relevant information that has not already been supplied or make them aware that additional information will be coming.

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66 Regulation 14: Power of the Commissioner to treat complaint as having been referred.

67 Regulation 25: Power of the Commissioner to treat conduct matter as having been referred.

68 Regulation 30: Power of the Commissioner to treat DSI matter as having been referred.

## 9.6 Other factors to consider for referral criteria

- 9.6.1 If further information or evidence indicates an incident was more serious than first thought and meets the criteria for referral, the Appropriate Authority must refer the matter to the SPCC. Further, a repeat referral may be appropriate if further information or evidence means that the SPCC may wish to review the mode of investigation.
- 9.6.2 An Appropriate Authority may seek the SPCC's advice about whether to refer a specific incident or allegation. Where there is doubt, the SPCC encourages referral.
- 9.6.3 Where the Appropriate Authority makes a referral sometime after the original incident, they must provide an explanation for the delay and any new evidence or information that has come to light leading to the referral.
- 9.6.4 All matters meeting the mandatory referral criteria (for example allegations of a serious sexual assault) must be referred to the SPCC without delay.

## 9.7 Deadlines for referral

- 9.7.1 A mandatory referral must be **made without delay**. This means no later than the end of the day after the date it first becomes clear to the Appropriate Authority that the matter must be referred.
- 9.7.2 Where the SPCC treats a complaint or matter as having been referred, it must be referred without delay and in any case by the end of the day after the day the SPCC notifies the Appropriate Authority that the matter must be referred.
- 9.7.3 Voluntary referrals should be made as soon as possible after the Appropriate Authority determines that the matter warrants a referral to the SPCC.
- 9.7.4 The process of referral must not delay any initial action by an Appropriate Authority to secure or preserve evidence.
- 9.7.5 When referring a matter, an Appropriate Authority should provide as much relevant information as possible to the SPCC to enable them to make an informed decision about whether an investigation is necessary and, if so, the appropriate mode of investigation. The need to provide information should be balanced against the timeliness of making the referral.

## 9.8 Determining whether and how a matter should be investigated

- 9.8.1 Where the SPCC decides that a matter must be investigated, they will decide the mode of investigation based on factors such as seriousness of the matter and the public interest.

9.8.2 The mode of investigation can be either:

- a. an investigation by the Appropriate Authority on its own behalf  
**(local investigation)**
- b. an investigation which is conducted by the Appropriate Authority under the direction of the SPCC **(directed investigation)**
- c. an investigation by the SPCC **(independent investigation)**

9.8.3 The SPCC has the power to **revisit a determined mode of investigation at any time** and change it – for example, where further information comes to light. In the case of a directed investigation, the SPCC is obliged to keep the mode of investigation under review to ensure that it continues to be the most appropriate.

9.8.4 Where the Commissioner determines that it is not necessary for a complaint, conduct matter or DSI to be investigated:

- a. in a case where the complaint is already being investigated by the Appropriate Authority on its own behalf, the Commissioner must refer the complaint back to the Appropriate Authority for the investigation to be completed
- b. in any other case, the Commissioner may refer the complaint back to the Appropriate Authority to deal with in a manner it sees appropriate – where there is no investigation already underway, the Appropriate Authority must handle the matter in whatever reasonable and proportionate manner it determines

## 9.9 Notification of mode of investigation decisions

9.9.1 For complaints, conduct matters and DSI matters, the SPCC must notify all of the following about the mode of investigation decision and the reason for it:

- a. the Appropriate Authority
- b. every person entitled to be kept properly informed under Regulation 78
- c. the complainant (if there is one)
- d. the person to whose conduct the investigation relates

# 10 Duties and considerations relevant in the handling of complaints, conduct matters and DSI matters

## 10.1 A reasonable and proportionate approach

- 10.1.1 This chapter should be read alongside Chapter 11 and Chapter 12 as they set out the duties and considerations that apply irrespective of whether a matter is being investigated or handled in other ways. A complaint, conduct matter, or death or serious injury (DSI) matter must be handled in a reasonable and proportionate manner, in line with the principles set out in Chapter 3.
- 10.1.2 While the legislative requirement places a duty on the Appropriate Authority to handle complaints in a reasonable and proportionate manner, this principle should also be applied to the handling of recordable conduct and DSI matters insofar as possible.<sup>69</sup>
- 10.1.3 The approach to handling should be made on a case-by-case basis. However, some matters must be investigated and there are certain requirements for the handling of all matters, irrespective of whether they are being investigated or handled in other ways.

## 10.2 Assessing what is reasonable and proportionate

- 10.2.1 The Appropriate Authority must consider whether the reasonable and proportionate way to handle a complaint is by investigation or in other ways. To this end, both the Appropriate Authority and complaint handler must consider what steps are reasonable and proportionate in handling a complaint and should take a number of factors into account. These include:
- a. the seriousness of the matter, including:
    - i. what is alleged
    - ii. the impact and/or harm that has been, or could have been, caused to the public interest
    - iii. the public interest
    - iv. whether any articles of the European Convention on Human Rights are engaged
    - v. the wider context and whether the matter gives rise to concerns additional to those alleged by the complainant

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69 See Regulation 17(3): Handling of complaints by the Appropriate Authority.

- vi. whether a number of previous similar complaints have been recorded or logged (either about the same issue, or, where appropriate, about the same officer or unit)
- vii. the potential for learning for individuals or Service Policing in general
- viii. whether there appears to be an indication that while the matter may not be misconduct or gross misconduct, it appears to be gross incompetence
- b. what facts need to be established and whether they are in dispute
- c. how long ago any incident took place and whether evidence is still likely to be available
- d. what might be done to remedy any issues
- e. what outcome the complainant may have indicated that they are seeking

10.2.2 In some circumstances, the reasonable and proportionate response to a complaint may be necessarily limited – for example, where the passage of time means that some evidence is no longer available. However, it is always important to balance this with the factors outlined above. The complaint handler should consider what can be done to address the dissatisfaction, to learn and avoid repetition of any mistakes, and to provide a reasonable and proportionate outcome. This is particularly important when the matters alleged had, or had the potential to have, a serious effect on the complainant or Service Policing.

10.2.3 Complaint handlers should regularly review whether their initial approach remains appropriate. A sound approach to complaint handling will help to identify common trends and systemic failures, and will provide the opportunity to learn from, remedy and avoid future mistakes.

### 10.3 Appointment of a person to handle the matter

10.3.1 People appointed to handle a matter must have the necessary experience, knowledge and skills. Depending on the nature of the matter, the handler may require a specific skillset. **They must not be someone whose involvement in this role could reasonably give rise to a concern about whether they could act impartially.** Perceived conflicts of interest may arise, for example, where the handler works either directly or indirectly under the management of the person whose conduct is being investigated, or where the Provost Marshal is under investigation and the investigator is from their Service Police force.

10.3.2 There are specific requirements regarding the appointment of an investigator (see Chapter 12).

### 10.4 Matters that must be investigated

10.4.1 A complaint must be investigated where the Appropriate Authority determines that is the reasonable and proportionate way to handle it.

10.4.2 In addition, apart from the exceptions to the duties to investigate listed below (paragraph 10.5.1), the following must be investigated:

- a. any complaint where there is an indication, from the complaint itself or from handling that either:
  - i. a person serving with the Service Police may have committed a Service offence or behaved in a manner that justifies administrative action procedures (see the glossary at Annex A)
  - ii. there may have been infringement of a person's rights under Articles 2 or 3 of the European Convention on Human Rights (see the glossary at Annex A)
- b. any complaint, recordable conduct or DSI matter that the Service Police Complaints Commissioner (SPCC) has determined must be investigated, following the referral of the matter to the SPCC or the SPCC treating the matter as having been referred
- c. any complaint, recordable conduct or DSI matter that the SPCC has determined must be investigated or re-investigated following their decision in respect of a review

10.4.3 'Indication' is to be given its ordinary meaning. In making the decision about whether there is 'an indication', the Appropriate Authority should consider whether the circumstances, and the readily available evidence, show or reasonably imply that a member of the Service Police may have committed a Service offence, behaved in a manner that justifies administrative action, or that there may have been an infringement of a person's rights under Articles 2 or 3. An allegation does not need to be accompanied by evidence for there to be an indication. However, the decision should take account of the facts asserted by the complainant, alongside any readily available evidence, and not focus solely on what the complainant says those facts amount to.

10.4.4 Where there is doubt as to whether or not there is an indication, this may suggest that it is reasonable and proportionate to investigate.

## 10.5 Exceptions to the duty to investigate complaints

10.5.1 There are exceptions to the duty to investigate a complaint where the Appropriate Authority determines that:<sup>70</sup>

- a. the complaint concerns either substantially the same:
  - i. conduct or other matter as a complaint made previously
  - ii. conduct as a conduct matter that was previously recorded
- b. there is no fresh indication in respect of that conduct or other matter that either:
  - i. a member of a Service Police force may have committed a Service offence

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<sup>70</sup> See Regulation 17(6).

- ii. a member of the Service Police behaved in a manner that would justify disciplinary proceedings
  - iii. there may have been infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights
- c. there is no fresh substantive evidence which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded
- d. the previous complaint or conduct matter either:
- i. has been, or is being, investigated
  - ii. has been, or is being, otherwise handled in accordance with the Regulations (in the case of a complaint)
  - iii. has previously been withdrawn and, therefore, the provisions of the Regulations did not apply (in the case of a complaint)<sup>71</sup>

10.5.2 'Substantive' evidence means, for example, evidence of a material fact which is in dispute or may have a bearing on the outcome of the complaint, as distinct from evidence of matters peripheral to the complaint and highly unlikely to have any bearing on the outcome. However, the matter should still be handled in a reasonable and proportionate manner.

## 10.6 Members of the Service Police

10.6.1 Members of the Service Police, including witnesses, are expected to co-operate with investigations, inquiries and formal proceedings. This includes their attendance for interviews. They must participate openly and professionally in line with the expectations as a member of the Service Police when they are identified as a witness. Failure to do so may be treated as a breach of professional standards.

10.6.2 Where a member of a Service Police force is required to attend an interview, a written notice should be given to them and if reasonably practicable a date and time agreed.<sup>72</sup>

## 10.7 Communicating with the complainant and other parties

10.7.1 The SPCC (in both directed or independent investigations), or Appropriate Authorities (where they have taken on responsibility for updating complainants) must keep the complainant and/or interested people properly informed about the progress and outcome of the handling of the complaint, recordable conduct matter or DSI matter.

10.7.2 Appropriate Authorities must ensure that they are able to respond to any questions or requests for information. To achieve this, the relevant Service Police force which has taken on responsibility for updating complainants should have appropriate

<sup>71</sup> See Regulation 19.

<sup>72</sup> See Regulation 53.

processes in place. This will enable them to accurately respond in a timely fashion to any queries or requests for information, while still taking into account the exceptions listed in paragraphs 10.8.1 to 10.8.4.

- 10.7.3 To deliver a quality service, Service Police forces should, where practicable, tailor communication to meet the needs of the individual. They should also ask the complainant how they wish to be kept informed of the progress of their complaint, making any reasonable adjustments where required.
- 10.7.4 The first update to a complainant and/or interested people must be meaningful, provided promptly and given in writing, at the latest within four weeks of the start of the **handling** of the matter.<sup>73</sup>
- 10.7.5 Subsequent updates should be provided both in writing or another method depending on the complainant's and/or interested person's preferences. An update should include:
- a. the stage reached
  - b. what has been done and what remains to be done
  - c. a summary of significant evidence (where relevant)
  - d. likely timescales for completing the investigation or other handling and any revisions to this
  - e. reasons behind the revision on timescales (where relevant)
  - f. reasons for delay (where relevant)
  - g. steps taken to mitigate against the delay (where relevant)
- 10.7.6 The Appropriate Authority must in any event decide whether it is appropriate to offer, or grant a request for, a meeting with a complainant and/or interested person to keep them properly informed. As soon as practicable after any such meeting, the Appropriate Authority must send the complainant or interested person a written record of the meeting and explain how any concerns raised will be addressed.
- 10.7.7 The SPCC expects any person who is complained about (if any), or whose conduct the matter relates to, to be given updates in a similar fashion, taking into account the exceptions in paragraphs 10.8.1 to 10.8.4.
- 10.7.8 Where an investigation is subject to special procedures, there are specific requirements for the provision of information to the person who is complained about or whose conduct the matter relates to (see Chapter 12).

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73 See Regulation 79. In the case of the SPCC, the matter will be 'handled' by the SPCC from the moment the referral in question has been accepted by the SPCC, not from the date of receipt or acknowledgment of the referral.



## 10.8 Exceptions to the duty to provide information

- 10.8.1 The duty to keep the complainant and interested people informed does not apply in circumstances where the SPCC or Appropriate Authority deems that non-disclosure is either:<sup>74</sup>
- a. necessary to prevent premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings
  - b. necessary to prevent the disclosure of information in any circumstances in which its non-disclosure is in the interest of national security
  - c. for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
  - d. required on proportionality grounds
  - e. otherwise in the public interest
- 10.8.2 The SPCC or Appropriate Authority must consider whether the non-disclosure of information is justified under any of the above grounds where either:
- a. that information is relevant to, or may be used in, any actual or prospective administrative action procedures
  - b. the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings
  - c. the disclosure of that information may prejudice the welfare or safety of any third party
  - d. that information constitutes criminal intelligence
- 10.8.3 Information must not be withheld on one of these grounds unless the Appropriate Authority concludes that there is a real risk of disclosure causing a significant adverse effect. The risk may not be obvious from one document but may be more apparent when several documents are taken together. For example, an informant may not be named in some papers, but it may be possible to identify them when several documents are considered together.
- 10.8.4 Handlers must consider how such risks may be avoided or minimised by redacting harmful or personal material from the document or information requested. What needs to be removed will depend on what information is requested and what harm may arise from its disclosure. Handlers should consider what information can reasonably and proportionately be provided to the complainant or interested person without breaching any of the exceptions above.

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74 See Regulation 81.

## **10.9 Keeping an audit trail**

- 10.9.1 People handling matters must be able to demonstrate what has been done, what decisions have been made and why, including where a decision has been made not to do something. Therefore, all documentary evidence should be collated and preserved with an available audit trail in relation to every matter, irrespective of its complexity. This information will be useful if the complaint is subject to a review and it must be provided to the relevant review body.
- 10.9.2 There is a duty on parties to obtain and preserve evidence relating to matters, whether this is the Appropriate Authority or Provost Marshal.

## **10.10 Apologising when and where appropriate**

- 10.10.1 The SPCC expects an apology to be made where the handling of a matter indicates that something has gone wrong. A sincere and timely apology can have a significant effect and demonstrates a willingness to accept accountability. Delaying an apology unnecessarily can diminish its value when it is finally received.
- 10.10.2 If it becomes apparent that an apology is appropriate before the handling is complete, the Appropriate Authority should seek to provide one at the earliest appropriate opportunity. It is not always necessary to wait until the end of handling before giving an apology. However, where there is a possibility that disciplinary proceedings could follow, and the apology relates to any action, fact or circumstance that is relevant to a misconduct allegation, it is appropriate to wait until after any related proceedings have taken place, or until it is clear that they will not take place.
- 10.10.3 An apology should not be offered on behalf of someone, unless they have agreed to the apology.

## **10.11 Criticism**

- 10.11.1 No criticism or adverse comment about a person who is identified, or capable of being identified, should appear in an investigation report or other written outcome unless that person has had an opportunity to respond to it. This applies not only to people serving with the Service Police, but to anyone who is identified, or capable of being identified. Normally, where the matter has been investigated, criticism or adverse comments will be put to the relevant person during an interview or by giving them a notice of investigation. In matters that are not being investigated, criticism or adverse comments could be drawn to the person's attention in other ways – for example, by providing a copy or summary of the complaint.

10.11.2 When drafting a report or other written outcome, if the person handling the matter believes that the individual being criticised or subject to adverse comments has not been given an opportunity to respond, they should either:

- **remove the criticism or adverse comment** from the report or response (unless to do so would undermine the findings or adequacy of the explanation)
- send a letter or email to the relevant person **informing them of what the criticism or adverse comment is and the facts or evidence that support it** – the recipient must then be given a reasonable opportunity to respond, and the person handling the matter should consider any response and decide whether the criticism or adverse comment should be amended or removed from the report<sup>75</sup>

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<sup>75</sup> Where appropriate to the needs of the person in question, it may additionally be necessary to make reasonable adjustments and inform them in another way.

# 11 Handling recorded complaints in other ways

## 11.1 Taking a flexible approach

- 11.1.1 Although the Regulations distinguish between those matters that are ‘investigated’ and those that are not, in practice, certain investigative steps may be reasonable and proportionate even when not carrying out an investigation – for example, where conflicting accounts cannot be reconciled without some investigative steps being taken.
- 11.1.2 Complaint handlers should think imaginatively about what action will be most useful to provide a meaningful response. They should consider the following non-exhaustive factors when handling a non-investigative matter:
- a. What action will be most useful to provide meaningful answers to issues or concerns raised?
  - b. How do I remedy the dissatisfaction of the complainant?
  - c. Where applicable, is mediation between parties (the complainant and person complained about) a way to resolve the matter?
  - d. Do I need to take certain investigative steps equivalent to a recorded and investigated matter to clarify issues (for instance, where there are conflicting accounts)?
  - e. Have lessons learnt or changes that are required to policies and procedures been identified?
- 11.1.3 It is important that, from an early stage, complaint handlers consider setting out the scope of what they plan to do to address the complaint. This should be shared with the complainant, interested parties or people whose actions are under consideration (if any), taking into account any exceptions to the duty to provide information (see Chapter 10, paragraphs 10.8.1 to 10.8.4). This will help to ensure that the complainant understands what to expect from the outset and that all the issues are addressed.
- 11.1.4 The person complained about should be actively encouraged to participate in the handling of the complaint. It is expected that they will, at a minimum, comment on the complaint. Where a complaint is not being investigated, any account taken as part of the handling of the complaint is not admissible in any subsequent criminal, civil or disciplinary (either the commission of a Service offence or administrative action) proceedings, except where it consists of an admission relating to a matter that is not under consideration as part of the handling.<sup>76</sup>

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76 See Regulation 17(7).

- 11.1.5 Reasonable and proportionate handling must lead to a reasonable and proportionate outcome. Complaint handlers should consider the guidance on outcomes as set out in Chapter 16.

## **11.2 Deciding to take no further action**

- 11.2.1 Complaint handlers should seek to resolve a complainant's concerns wherever possible, even if it is only reasonable and proportionate to take limited steps. However, in some circumstances, it may not be reasonable and proportionate to take any further action with a complaint after recording it. These may include:
- a. a complaint that is about the off-duty behaviour of a member of the Service Police, which has no relevance to their role as a member of a Service Police force and, even if proved, would not discredit the Service Police or undermine public confidence in it
  - b. if the complaint (rather than the alleged incident giving rise to the complaint) is fanciful – this means that by its very nature, no reasonable person could consider it to be credible
  - c. if the complaint contains too little information to be able to progress any enquiries, and attempts to clarify it with the complainant have been unsuccessful
- 11.2.2 There may be circumstances where some enquiries are needed before it can be established that it is reasonable and proportionate to take no further action. These circumstances include, for example, where either:
- a. the complaint has already been responded to and no new evidence or concerns are apparent, in accordance with the principle that complaints should not usually be re-visited, and where this may raise unrealistic expectations of different outcomes
  - b. evidence demonstrates that the complainant is using the complaints system purely to frustrate, embarrass, worry or annoy parties and there is no foundation to the complaint
- 11.2.3 A decision to take no further action should never be taken simply because, for example, the complaint is 'difficult' to deal with. Complaint handlers should always try to take positive action towards the resolution of a complaint wherever it is reasonable and proportionate to do so, irrespective of the complexity of a matter.
- 11.2.4 Where it is decided that no further action can be taken as part of the reasonable and proportionate handling of a complaint, a detailed explanation should be provided to the complainant, in line with the duties around communicating the outcome and the right to apply for a review.

# 12 Requirements for investigations

## 12.1 Investigations

- 12.1.1 An investigation within the context of the Service Police complaints system could mean a complaint investigation, a professional standards investigation, or even a Service offence/criminal investigation depending on the circumstances of a particular case.
- 12.1.2 An investigation must be effective and capable of establishing the facts of the case, identifying any learning, and, where appropriate, giving those responsible accountability. While there are some specific requirements for investigations, particularly where they are subject to special procedures, all investigations should be reasonable and proportionate, conducted promptly and allow effective participation from complainants or interested people (if any).

## 12.2 Appointment of a person to carry out the investigation

- 12.2.1 The Appropriate Authority is responsible for appointing the investigator in a local or directed investigation.<sup>77</sup> However, in a directed investigation the Service Police Complaints Commissioner (SPCC) may either:
- a. require that no appointment is made until the SPCC has confirmed that they approve the proposed person
  - b. at any time, if the SPCC is not satisfied with the person investigating, require the Appropriate Authority to select someone else to investigate, and notify the SPCC of who is selected
- 12.2.2 An Appropriate Authority may appoint a member of a Service Police force as an investigator.<sup>78</sup> However, the appointment is subject to all of the following important qualifications. These are:
- a. the investigator must have an appropriate level of knowledge, skills and experience to plan and manage the investigation
  - b. the investigator must not work, directly or indirectly, under the management of a person being investigated
  - c. a person must not be appointed if their involvement in that role could reasonably give rise to a concern about whether they could act impartially
  - d. where an investigation relates to a senior officer, the investigator must not be a member of the same Service Police force as the senior officer

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<sup>77</sup> See Regulation 35: Appointment of persons to carry out investigations.

<sup>78</sup> The appointed investigator must be a member of a Service Police force: Regulation 33(4).

- 12.2.3 The appointment of an investigator should be recorded in writing. Where any concerns have been raised about the appointment (including about any real, perceived or alleged conflict of interest), the Appropriate Authority should also record in writing their decision about whether or not to appoint the investigator, together with its rationale.
- 12.2.4 At the start of each investigation, the investigator should make a written declaration as to whether there is anything that could reasonably give rise to a concern about whether they, or any member of the investigation team, could act impartially.
- 12.2.5 Where there is concern, the investigator should raise it with the Appropriate Authority **(and the SPCC in a directed investigation)** before they, or any member of the investigation team, take any steps other than preservation of evidence in connection with the investigation. Where no concern is identified, this should be noted for the purposes of transparency.
- 12.2.6 The Appropriate Authority (or the SPCC in a directed investigation) should then decide whether the investigator should be replaced. If concerns are identified about any other member of the investigation team, the Appropriate Authority (or the Commissioner in a directed investigation) should advise the investigator whether to replace the team member. Any decision made, together with the reasons, should be recorded in writing.

## 12.3 Terms of reference

- 12.3.1 While the Regulations only mandate terms of reference for investigations that are subject to special procedures, it is considered best practice for all investigations to have terms of reference. Terms of reference will vary according to the complexity of an investigation. In straightforward investigations that are not subject to special procedures, they may be as simple as a summary of the complaint being investigated. Other investigations will require more detailed terms of reference to ensure clarity from the outset about what will, and will not be, addressed.
- 12.3.2 Subject to the exceptions in paragraphs to 10.8.1 to 10.8.5, a copy of the terms of reference as well as any revisions to them should be sent to complainants, interested people and any person whose actions are under investigation. It may be useful to offer to meet the complainant and any interested person to discuss these further if they have any questions about the terms of reference.

## 12.4 Complaints relating to investigations of death or serious injury (DSI) matters

- 12.4.1 When a complaint is made that relates to a matter under investigation as a DSI, the details of the complaint should be considered, and decisions made about whether it should be recorded, investigated and referred. If the complaint covers the entire DSI incident, it is not necessary to continue the DSI matter (as the definition of a DSI matter is no longer met) and the whole investigation will be converted to a complaint investigation. The investigator for the DSI should decide whether there

are any matters that form part of the DSI investigation that do not form part of the complaint investigation. If there are, the DSI investigation should continue to address these matters.

## **12.5 DSI matters becoming conduct matters**

- 12.5.1 If, during an investigation of a DSI matter, it appears to the investigator that there is an indication that a member of a Service Police force may have committed a Service offence or behaved in a manner that would justify initiating administrative action procedures (see the glossary at Annex A), the investigator must make a submission to that effect. This should be in writing to the Appropriate Authority of a local investigation, or the SPCC in a directed or independent investigation and should set out the reasons for reaching this conclusion.
- 12.5.2 In a local investigation, if the Appropriate Authority agrees with the submission, it must notify the relevant Appropriate Authority for the person whose conduct is in question (if it is not the relevant authority itself), and the SPCC, and send them a copy of the investigator's submission. The relevant Appropriate Authority must then record the matter as a recordable conduct matter and consider whether it should be referred to the SPCC. In any case, the SPCC may reconsider the mode of investigation.
- 12.5.3 In a directed or independent investigation, if the SPCC agrees with the submission, they will send a copy of the submission to the Appropriate Authority for the DSI matter (and the Appropriate Authority for the person whose conduct is in question, if different). The Appropriate Authority for the person whose conduct is in question must record the matter as a recordable conduct matter. The SPCC may also decide to reconsider the mode of investigation.
- 12.5.4 Once the matter has been recorded, the person who was investigating the DSI matter must investigate the matter as a conduct matter (unless the SPCC has decided to reconsider the mode of investigation). They must make a severity assessment (see below) in relation to the conduct of the person concerned.
- 12.5.5 A DSI investigation should be kept under review to establish whether, at any time, there is an indication that a Service offence has been committed or behaviour that would justify initiating administrative action procedures.

## **12.6 Special procedures**

- 12.6.1 Special procedures exist to protect the rights of those under investigation for more serious matters and must be followed if either:
- a. the investigation concerns a recordable conduct matter
  - b. during a complaint investigation, it becomes clear to the investigator (or the SPCC in a directed or independent investigation) that a Service Police force member may have committed a Service offence or acted in a way that justifies starting administrative action procedures



- 12.6.2 The investigator must record the reasoning behind their decision as to whether an investigation should be subject to special procedures. Once the decision has been made to follow special procedures, a severity assessment must be conducted.
- 12.6.3 If at any time during a directed or independent investigation the SPCC determines that the investigation should be subject to special procedures, the investigator must follow them.

## 12.7 Severity assessments

- 12.7.1 Severity assessments provide the person who is the subject of investigation with an indication of the investigator's view (or the SPCC's view in directed or independent investigations) of the level of seriousness of the conduct.
- 12.7.2 A severity assessment is an opinion on whether the conduct of the person under investigation, if proven, would amount to misconduct that is so serious as to justify the initiation of administrative action procedures.<sup>79</sup> In a local investigation, the investigator must make this assessment.
- 12.7.3 In a directed investigation, the investigator will form an opinion, but will refer to the case to the SPCC, for the SPCC to make a severity assessment in relation to the conduct of the person concerned.
- 12.7.4 In an independent investigation the person investigating must, as soon as is reasonably practicable, refer the case to the SPCC to make the assessment.
- 12.7.5 However, in all cases, a severity assessment may only be made after consultation with the Appropriate Authority.<sup>80</sup> The severity assessment may then be revised if the investigator (or the SPCC in a directed or independent investigation) believes it is appropriate.<sup>81</sup> In a directed investigation, they should notify the SPCC of their opinion. The SPCC may also indicate that it is appropriate to revise the assessment. If so, the investigator must refer the case to the SPCC for them to revise the assessment.
- 12.7.6 Any severity assessment must be fully reasoned and documented.

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79 Under the Service Police (Complaints etc.) Regulations 2023, 'misconduct' means a breach of the professional standards, and 'gross misconduct' means a breach of the professional standards that is so serious as to justify termination of a person's membership of the relevant Service Police force.

80 See Regulation 47: Special procedure: severity assessment.

81 See Regulation 49: Special procedure: revision of severity assessment.

## 12.8 Notices of investigation and providing terms of reference

- 12.8.1 On the completion of a severity assessment, the person investigating must give the person concerned written notice that they are under investigation (unless giving the notification might prejudice the investigation or any other investigation).<sup>82</sup> The notice must state all of the following:
- a. the conduct that is the subject matter of the allegation and how it is alleged to fall below the professional standards
  - b. that there is to be an investigation into the matter and the identity of the person investigating
  - c. the result of the severity assessment
  - d. the effect of Regulation 50 (see 'Representations to the investigator' below)
  - e. that while the person concerned does not have to say anything, it may harm their case if they do not mention when interviewed or when providing any information under Regulation 50 (see below) something later relied on in any administrative action procedures
- 12.8.2 The person investigating must also provide the person concerned with a copy of the terms of reference of the investigation and any subsequent revised terms of reference. Where practicable, these should be provided at the time of giving the written notice or, if not then, within five working days (beginning with the first working day after the day that the notice is given).
- 12.8.3 The written notice and terms of reference must either be:
- a. given to the person concerned in person
  - b. left with a person at, or sent by recorded delivery to, the last known address of the person concerned
  - c. given to the person concerned in any other manner agreed between the person investigating and the person concerned (for example, by email)
- 12.8.4 However, the notice and/or the terms of reference should not be given to the person concerned if the investigator (or the SPCC in a directed or independent investigation) considers that to do so might prejudice the investigation or any other investigation. If a notice is provided, but the terms of reference are not, the investigator must provide (within the same timescale as in paragraph 12.8.2 above) a further notice explaining that the terms of notice are not being provided and why.

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<sup>82</sup> See Regulation 48: Special procedure: notification of severity assessment etc.

## 12.9 Representations to the investigator

- 12.9.1 During an investigation that is subject to special procedures, the investigator (in a local investigation) or the SPCC (in a directed or independent investigation) must consider any relevant statement or document provided by the person concerned. However, this only applies where the document or statement is provided within 10 working days (unless this period has been extended by the investigator), starting the day after the day that a copy of the terms of reference is sent (or notice explaining why a copy of the terms is not being sent).
- 12.9.2 For directed or independent investigations, the investigator must send a copy of any relevant statement or document received to the SPCC for consideration.<sup>83</sup>
- 12.9.3 The investigator should make a record of any oral statement or response. The person concerned should be asked to sign the record as an accurate reflection of what has been said.

## 12.10 Conducting an investigation

- 12.10.1 Investigations will vary greatly in their scope, purpose and complexity depending on the nature of the complaint or matter under investigation. The investigator should take all reasonable steps available to them to secure the evidence concerning the incident, including witness statements and forensic evidence. Investigations may require only limited enquiries or more substantial activity to gather and analyse a wide range of evidence.
- 12.10.2 **Investigators should always be alert to forensic windows for evidence gathering.** For example, in an allegation of rape, there may be a very narrow window of time in which DNA or other biological or physical evidence might be available. Any delay might undermine the ability to collect evidence or may increase the risk of contamination. Whatever engagement there might be between potential Appropriate Authorities and/or the SPCC relating to who may have primacy of investigation, all parties should prioritise seizing and preserving important time-sensitive evidence, even if there is a prospect that a different organisation may ultimately take over the investigation.
- 12.10.3 The investigator should attempt to obtain an account from the complainant (if there is one). In investigations into a DSI, the investigator should consider whether to engage with any injured person during the investigation, as a witness (as injured people will often have evidence to offer about how they suffered their injury).
- 12.10.4 In addition, where the actions of a member of the Service Police are under investigation, it will usually be reasonable and proportionate to obtain an account from them. While the account must be recorded in such a way that it can be reviewed, it is not always reasonable and proportionate for that account to be taken via an interview. For example, a written statement provided by the person in question may suffice.

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<sup>83</sup> See Regulation 50: Special procedure: representations to the person investigating.

12.10.5 Where a decision is taken not to obtain information or material that has been identified, a record should be made of why it is not considered reasonable and proportionate to do so.

## 12.11 Interviews

- 12.11.1 There are certain processes which must be applied where a member of a Service Police force, whose actions are under investigation, is going to be interviewed. The investigator must consider whether the person to be interviewed reasonably requires any adjustments to ensure procedural fairness – for example, modification to the timescales.
- 12.11.2 These provisions apply to interviews conducted under the Regulations. An interview of a person regarding their involvement or suspected involvement in a Service offence must also comply with the Service Police Codes of Practice and relevant case law. This includes the relevant provisions of the Police and Criminal Evidence Act (PACE), as they apply to these interviews.<sup>84</sup>
- 12.11.3 Where the matter includes both criminal and misconduct allegations, it should be made clear to the officer concerned at the start of the interview whether they are being interviewed in respect of the criminal or misconduct allegation.
- 12.11.4 Where an interview does not relate to a person's involvement or suspected involvement in a Service offence, the process will be dictated by fairness, which may result in the process being similar to a PACE interview.<sup>85</sup> The interviewer shall make clear where any interview is a formal PACE interview.
- 12.11.5 During an investigation that is subject to special procedures, if an investigator proposes to interview, they must agree a date and time for the interview with the person concerned (the interviewee).
- 12.11.6 If a date and time is not agreed, the investigator must specify a date and time. If the interviewee is not available to attend at the specified time but proposes an alternative that is reasonable and that falls within five working days (beginning with the first working day after the day specified by the investigator), then the interview will be postponed to the time proposed.
- 12.11.7 The interviewee must be given a written notice of the date, time and place of interview. This should happen as soon as reasonably practicable after these are either agreed or, in the absence of agreement, specified by the investigator.
- 12.11.8 In advance of an interview, the investigator must also provide the interviewee with information they consider appropriate in the circumstances of the case to enable the interviewee to prepare for the interview.

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84 The Service Police Codes of Practice were issued pursuant to Section 113 of PACE.

85 The term 'PACE interview' means in accordance with PACE and with the Service Police Codes of Practice.

- 12.11.9 Decisions about what to disclose should be made in light of the circumstances of the case and documented. The purpose of disclosure is to give the interviewee a clear understanding of the allegations to enable them to respond fully. The interviewee is not entitled to the disclosure of every document: only those that the investigator considers appropriate in the circumstances of the case to enable the interviewee to prepare for interview.
- 12.11.10 In some situations – for example, where the allegations are at the more serious end of the spectrum – the interviewer may wish to use methods to accurately record the interview (e.g. audio or video), or techniques to assist accurate recollection such as cognitive interviewing. Only investigators who have been trained appropriately should undertake these interviews.
- 12.11.11 At the beginning of the interview, the interviewee should be reminded of the content of any written notice of investigation given to them and of the warnings it contains.

## 12.12 Timeliness of investigations

- 12.12.1 It is important that investigations are conducted in a timely manner. This can affect what outcomes may be available and therefore the ability to secure a fair result. It helps to secure confidence in the Service Police complaints system and minimise the impact of an investigation on all those involved. However, acting promptly should not come at the expense of necessary diligence.
- 12.12.2 Where a local investigation is not completed within 12 months, the Service Police force must provide certain information to the relevant Appropriate Authority (except where it appears that doing so might prejudice the investigation or any other investigation), and to the SPCC.
- 12.12.3 The information to be provided is as follows:<sup>86</sup>
- a. the date that:
    - i. the complaint was made
    - ii. the conduct matter or DSI matter that the investigation relates to came to the attention of the Appropriate Authority
  - b. the date that any notice of a severity assessment was given
  - c. the progress of the investigation
  - d. an estimate of when the report on the investigation will be submitted
  - e. the reason for the length of time being taken to complete the investigation
  - f. a summary of planned steps to progress the investigation and bring it to a conclusion

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86 See Regulation 37.

12.12.4 The 12 months starts from either:

- a. the date that the complaint was made
- b. the date that the conduct matter or DSI matter came to the attention of the Appropriate Authority

12.12.5 An investigation is completed once the report has been submitted to the appropriate person (see Chapter 13).

12.12.6 In a directed or independent investigation, the SPCC must provide this information to the Defence Council or single Service Board depending on the relevant Service Police force and, unless it is the conduct of the Provost Marshal that is under investigation, the Provost Marshal of that Service Police force.

12.12.7 The information provided should enable all parties to clearly understand the reason why the investigation has not been completed within 12 months, and what the next steps are. Clear, reasonable timescales for when the investigation will be completed should also be provided.

12.12.8 A copy of the information should be provided to the complainant and any interested person, unless the SPCC or Appropriate Authority believes that non-disclosure of the information is necessary.<sup>87</sup>

12.12.9 The information should also be provided to the person whose conduct the investigation relates to unless the SPCC or Appropriate Authority considers that doing so might prejudice the investigation or any other investigation.

12.12.10 This process must be repeated every six months if the investigation has not been completed. However, efforts should be made to keep to the proposed timescales, wherever possible.

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87 Regulation 80 states that non-disclosure of information is necessary for the following purposes:

- preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective disciplinary or criminal proceedings
- preventing the disclosure of information in any circumstances in which its non-disclosure:
  - is in the interests of national security
  - is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders
  - is required on proportionality grounds
  - is otherwise necessary in the public interest

# 13 Investigation reports

## 13.1 Investigation reports

- 13.1.1 At the end of an investigation, an investigation report must be completed. It is an important document as it is the primary record of the investigation, the evidence and the investigator's analysis of the evidence. The Appropriate Authority will rely on the report to guide them through the evidence, as may others including the Service Police Complaints Commissioner (SPCC), the relevant review body, the court martial and/or those conducting administrative action.
- 13.1.2 Subject to certain exceptions (see Chapter 10, paragraph 10.8), the report will usually be sent to all of the following:
- a. the complainant
  - b. the person whose actions are under investigation
  - c. any interested people
- 13.1.3 The report needs to be written in clear and unambiguous terms. It must also be factually accurate, and any opinions expressed must be based on the evidence gathered during the course of the investigation.

## 13.2 Who owns the report

- 13.2.1 **In an investigation by the Appropriate Authority on its own behalf**, the final report is submitted to the Appropriate Authority by the appointed investigator. Any opinion expressed in the report must be that of the investigator and not the Appropriate Authority. The Appropriate Authority can only make their own determinations following submission of the report.
- 13.2.2 **In an investigation directed by the SPCC**, the report is submitted to the SPCC by the investigator who has been appointed by the Appropriate Authority. However, as the SPCC has direction and control of the investigation, they should be consulted about the report's content before it is finalised. Where there is a dispute between the SPCC and the investigator on any matter in the report, the SPCC may provide an addendum to the report setting out their views.
- 13.2.3 **In investigations by the SPCC acting personally or by an investigating officer appointed by them**, the report belongs to the SPCC. Where there is a dispute between the SPCC and the appointed investigator on any matter in the report, the SPCC may provide an addendum to the report setting out their views.

## 13.3 The content of an investigation report

### Investigations not subject to special procedure

- 13.3.1 The report should include an accurate summary and analysis of the evidence and should attach or refer to any relevant documents.

- 13.3.2 Where relevant, it may also be appropriate to explain in the report why the investigation was not subject to special procedures (for example, that there was no indication of a Service offence or behaviour that would justify the initiation of administrative action – as defined in the glossary at Annex A). This may be particularly useful where, for example, the investigation relates to a complaint and the complainant made allegations of misconduct.
- 13.3.3 **It is important to note that the investigator should not express an opinion in the report on whether there is a case to answer for misconduct or gross misconduct.**<sup>88, 89</sup> However, the investigator should highlight any areas of learning they have identified.
- 13.3.4 In the investigation of a complaint, the report should address each of the allegations made and state whether, in the investigator's opinion, any of the following determinations are appropriate:
- a. the service provided by the Service Police was acceptable
  - b. the service provided by the Service Police was not acceptable
  - c. the investigator has looked into the complaint, but has not been able to determine if the service provided was acceptable
- 13.3.5 The determinations should be underpinned by a clear rationale for the benefit of the Appropriate Authority and the complainant.
- 13.3.6 Where the investigation has considered the actions of a member of a Service Police force, the investigator should draw attention to and provide sufficient information about matters that would help the Appropriate Authority or SPCC in making recommendations.
- 13.3.7 For a death or serious injury (DSI) investigation, the report should include:
- a. an analysis of the evidence as to how, and to what extent (if any) the person who died or was seriously injured had contact with the Service Police
  - b. the degree to which this contact (if any) caused or contributed to the DSI matter
  - c. any concerns or questions raised by interested people, such as the injured person or next of kin<sup>90</sup>
  - d. any areas of learning identified

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88 'Misconduct' in the Regulations is defined as a breach of the professional standards.

89 'Gross misconduct' in the Regulations is defined as a breach of the professional standards that is so serious as to justify termination of membership of the Service Police force.

90 See Regulation 78.



## 13.4 Investigations subject to special procedures

- 13.4.1 This section deals with investigation reports for recordable conduct matters or complaints that have been subject to special procedures, where there is an indication that a member of a Service Police force may have committed a Service offence or behaved in such a manner that may justify administrative action procedures.
- 13.4.2 Any report must accurately summarise the evidence and attach or refer to any relevant documents. However, if special procedures apply, the report must also include the investigator's opinion on whether any person being investigated has a case to answer in respect of misconduct or gross misconduct, or no case to answer.<sup>91</sup>

## 13.5 Mixed complaints

- 13.5.1 A complaint may contain several different allegations. In such matters the investigator should break down the complaint into its underlying allegations to analyse in the report. Some of these allegations may be subject to special procedures and others may not.
- 13.5.2 While it is possible to formally split the investigation, it is also possible to deal with all allegations in the same report and give an opinion on the allegations that were not subject to special procedures.<sup>92</sup> However, it is particularly important that the report clearly outlines the allegations subject to special procedures and those that are not. The report must be structured so that it is clear which allegations are being addressed. This should be done only where there is a clear distinction between the elements of the complaint, so that making determinations on the non-special procedure allegations does not determine the matters that are also subject to the investigator's opinion on the case to answer.

## 13.6 Submission of the report

- 13.6.1 Where a person is investigating on behalf of the Appropriate Authority, the final report into a complaint or conduct matter must be submitted by that person to the Appropriate Authority.<sup>93</sup> In a directed investigation, the appointed person to the investigation must submit a report to the SPCC and forward a copy to the Appropriate Authority. For recorded conduct matters that were formerly DSI matters, the same approach applies.

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91 Regulation 56(8)(c). See, in relation to the Independent Office for Police Conduct, the judgment in **West Yorkshire Police, R (on the application of) v Independent Police Complaints Commission & Ors** [2014] EWCA Civ 1367 and the analysis of the Court at paragraphs [50] to [56], which is clear that investigators should (in special procedure cases) evaluate the evidence for the purpose of deciding whether there is a case against such officer that calls for an answer, but should not evaluate the evidence for the purpose of the making a final decision on the merits of an allegation of misconduct or gross misconduct by the officer who is the subject of the complaint (see in particular paragraph [56]).

92 See Regulation 38 – Combining and splitting investigations.

93 See Regulation 56: Final reports on investigations: complaints, conduct matters and certain DSI matters.

13.6.2 However, the report in a DSI investigation, where there has been no related recordable conduct matter, must be submitted to the SPCC and a copy sent to the Appropriate Authority.<sup>94</sup>

13.6.3 Where a person has been designated to carry out the investigation on behalf of the SPCC, they must submit the report to the SPCC. Where the SPCC is acting in person, they must complete the report.

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<sup>94</sup> See Regulation 60: Final reports on investigations: other DSI matters.

# 14 Suspending an investigation or other procedure and resuming handling

## 14.1 Power to suspend an investigation or other procedure

14.1.1 The Service Police Complaints Commissioner (SPCC) or an Appropriate Authority may suspend an investigation or other procedure that in their opinion would either:

- a. prejudice any investigation relating to a Service offence or disciplinary proceedings<sup>95</sup>
- b. prejudice any criminal investigations or criminal proceedings<sup>96</sup>

14.1.2 To determine whether such prejudice arises, it is necessary to consider both:

- a. the extent to which the matter raises issues that are the same as, or closely connected with, the issues in the ongoing Service offence, disciplinary, criminal investigation or criminal proceedings
- b. what prejudice (if any) would be caused to the ongoing Service offence, disciplinary, criminal investigation or criminal proceedings by the investigation or other procedure

14.1.3 If the power to suspend arises, the SPCC or Appropriate Authority should consider whether it is appropriate to exercise that power, or whether measures can be put in place to reduce or remove the risk of prejudice. They should also consider whether, even with appropriate measures, there would be significant prejudice to the criminal investigation or proceedings, which is not outweighed by the public interest in dealing with the matter promptly and bringing timely criminal or disciplinary proceedings against Service Police officers, where these are warranted.

14.1.4 A balancing exercise should be carried out, considering all of the following factors:

- a. the severity of the allegation against the member of the Service Police and the allegation against the suspect or defendant in the ongoing investigation into a Service offence, disciplinary proceedings, criminal investigation or criminal proceedings
- b. the relative strength of the evidence to support each allegation

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95 'Disciplinary proceedings' under the Regulations mean proceedings in relation to a Service offence (see Section 50(2) of the Armed Forces Act 2006 for the meaning of 'Service offence').

96 See Regulation 40: Suspension of investigation or other procedure.

- c. whether delay would lead to the frustration of any potential criminal proceedings, disciplinary proceedings or administrative action against the member of the Service Police
  - d. whether suspending the investigation or other procedure would risk the expiry of the 12-month period for concluding an investigation or any extended six-month period<sup>97</sup>
  - e. whether delay would otherwise lead to injustice to the complainant, interested person or subject of the complaint
- 14.1.5 Steps that may be taken to reduce or remove the risk of prejudice to a criminal investigation or proceedings, while still allowing the investigation or other handling of the matter to proceed, include:
- a. carrying out a single interview with each relevant witness covering both the subject matter of the criminal proceedings and the matter under investigation
  - b. interviewing witnesses to the matter in the presence of the solicitor for the defendant to the criminal proceedings
- 14.1.6 There will be cases where the balance exercise falls in favour of continuing the investigation or other handling, even though the issues raised by the criminal investigation or proceedings and by the complainant are closely linked.<sup>98</sup>
- 14.1.7 In a matter being investigated by the Appropriate Authority on its own behalf, the Provost Marshal should seek the advice and views of their own Appropriate Authority (the single Service Board or Defence Council) and the SPCC before exercising the power to suspend. In a directed investigation or one carried out in person or by an individual on the SPCC's behalf, the SPCC should consult with the Provost Marshal (if they are the Appropriate Authority) and that Provost Marshal's Appropriate Authority, or the relevant Appropriate Authority, before suspending an investigation.<sup>99</sup>
- 14.1.8 Where an investigation or other procedure is suspended, steps may still be taken without prejudicing the investigation into the Service offence, disciplinary proceedings, criminal investigation, or criminal proceedings – for example, securing evidence, such as CCTV, which may otherwise be lost or taking witness statements from those not involved in the other matter.
- 14.1.9 In any instance where an investigation or other procedure is suspended, the complainant should be notified in writing and be provided with an explanation for the decision.

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<sup>97</sup> This decision should be made in consultation with the Service Prosecuting Authority.

<sup>98</sup> This decision should be made in consultation with the Service Prosecuting Authority.

<sup>99</sup> None of the requirements of this paragraph detract from the Provost Marshal's duty of independence: see Section 115A of the 2006 Act.

14.1.10 The SPCC can decide that the investigation or other procedure should continue or be resumed, if they believe it is in the public interest. The SPCC must consult with the Appropriate Authority before making this direction.


## **14.2 Resumption of complaint investigations after disciplinary and criminal proceedings**

14.2.1 If circumstances change and it is no longer necessary to suspend the handling of a complaint that was being addressed through other means, the Appropriate Authority should inform the complainant and resume handling the complaint. If the complaint was under investigation prior to the suspension, the following steps must be followed:<sup>100</sup>

- a. where the whole or part of a complaint investigation has been suspended until the conclusion of disciplinary or criminal proceedings, unless the complainant has indicated that they wish for the investigation to start or be resumed, the SPCC or Appropriate Authority (depending on who suspended the investigation) must write to them asking whether they wish for the investigation to be started or resumed
- b. where the complainant indicates that they want the investigation to be started or resumed, the SPCC or Appropriate Authority must do so
- c. if the complainant indicates that they do not want the investigation to be started or resumed or if they fail to reply within 28 days starting on the day after the date of the letter sent to them, the SPCC or Appropriate Authority must determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter
- d. where the SPCC or Appropriate Authority decides that it is not in the public interest, they should notify the complainant
- e. where the SPCC or Appropriate Authority decides that it is in the public interest, the matter should be handled in accordance with the procedures set out in the Regulations
- f. the SPCC or Appropriate Authority must also notify any person whose actions are or were under investigation whether it will treat the matter as a recordable conduct matter, unless doing so might prejudice any criminal investigation or pending proceedings, or it would not be in the public interest

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<sup>100</sup> See Regulation 41: Resumption of investigation of complaint after disciplinary or criminal proceedings.

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- 14.2.2 The SPCC expects the Appropriate Authority to have the up-to-date contact details for the complainant, and to take all reasonable steps to contact them. This is especially important as, given the passage of time, the complainant's circumstances may have changed, and a 'no response' may not be due to an unwillingness to co-operate.
- 14.2.3 In a directed investigation the SPCC will be responsible for writing to the complainant (or their solicitor or other representative) following the conclusion of criminal proceedings, and for determining whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

# 15 Dealing with withdrawn complaints, notification and treating a complaint as a recordable conduct matter

## 15.1 Signed notification for withdrawn complaints

- 15.1.1 A complainant, or someone acting on their behalf, may decide to withdraw a complaint by notifying the Appropriate Authority in writing. The Appropriate Authority must record this. The same procedure applies where the complainant does not wish to take any further steps with the complaint.<sup>101</sup> For the avoidance of doubt, the withdrawal of a complaint does not of itself bring an investigation to an end (see, for example, paragraph 15.3 below).
- 15.1.2 Where this is the case, but the complainant has not provided signed confirmation in writing, in person or by someone acting on their behalf, the Appropriate Authority must write to the complainant to determine how they wish to proceed. Where the complainant replies and confirms that they wish to either withdraw or not take any further steps, or they do not reply within a period of 28 days from the date the letter was sent, the Appropriate Authority must proceed as if it had received a signed notification from the complainant withdrawing the matter.<sup>102</sup> The letter to the complainant must be sent in a way that can be audited.

## 15.2 Matters which the notification for withdrawn complaints applies

- 15.2.1 The notification for withdrawn complaints may relate to a matter that either:
- a. has been referred to the Service Police Complaints Commissioner (SPCC), or has been treated by the SPCC as having been referred
  - b. has not yet been referred back to the Appropriate Authority
  - c. is subject to review by the relevant review body
  - d. falls within another category
- 15.2.2 For matters under (a) and (b), the Appropriate Authority must notify the SPCC that they have recorded the withdrawal or the fact the complainant does not wish to take any further steps. For withdrawal notifications relating to reviews under (c), the Appropriate Authority is responsible for notifying the relevant review body which may be, for example, the SPCC, Defence Council or single Service Board.

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<sup>101</sup> See Regulation 19: Withdrawn complaints.

<sup>102</sup> See Regulation 20: Withdrawn complaints: no written signed notification.

The Appropriate Authority must let the appropriate review body know that it has recorded the withdrawal or the fact the complainant does not wish to take any further steps with the matter.

### **15.3 Whether to treat the complaint as a recordable conduct matter**

- 15.3.1 On being notified by the Appropriate Authority, the SPCC must then determine whether it is in the public interest to treat matters within 15.2.1 (a), (b) and (c) where the SPCC is the reviewing body, as a recordable conduct matter. The SPCC must then proceed to notify the Appropriate Authority and review body of their decision.
- 15.3.2 In a matter falling within (c), where the Appropriate Authority must determine whether it is in the public interest to treat a matter as a recordable conduct matter, they are responsible for notifying the relevant review body of their decision and the reasons for it. In these circumstances, where the complaint is already subject to review by the SPCC with respect to an investigation, and the Appropriate Authority determines that the complaint is not a recordable conduct matter, the SPCC must consider whether it is in the public interest to overturn this decision. If so, the SPCC must instruct the Appropriate Authority to change their decision.
- 15.3.3 A complaint may fall within (d) (another category) where a complaint has not been referred, or has been referred and the SPCC has already referred it back to the Appropriate Authority. Where a matter falls within (d), the Appropriate Authority is responsible for determining the public interest and whether it is a recordable conduct matter.
- 15.3.4 Timeliness is vital in determining whether a complaint should be treated as a recordable conduct matter, to prevent unnecessary delay. This applies both where the SPCC determines that a complaint is to be treated as a recordable conduct matter and must notify the appropriate body, and where the appropriate body must notify the SPCC if they determine that the complaint is not a recordable conduct matter.
- 15.3.5 Where a conduct matter comes to the attention of the Appropriate Authority, they must consider whether it must, or may, be formally recorded. Recordable conduct matters should be recorded as soon as practicable. A conduct matter should still be recorded even if there is a lengthy period between the events occurring and the matter coming to the attention of the Appropriate Authority.



# 4

## **Part 4: Outcomes of handling**

# 16 Outcomes following an investigation or handling in other ways

## 16.1 Reasonable and proportionate outcomes

- 16.1.1 The outcome should be reasonable and proportionate to the matter in question. This will be achieved by properly considering all the relevant factors. Decisions should be taken after considering the relevant evidence gathered, the wider context and the perspectives of any complainants, interested people, and people complained about or whose conduct the matter relates to.
- 16.1.2 To ensure outcomes are both reasonable and proportionate, the conclusions reached should be all of the following:
- a. impartial and logical
  - b. based on the facts of the case
  - c. giving appropriate weight to relevant evidence
  - d. supported by sound rationale
  - e. addressing and remedying any issues identified during handling

## 16.2 Determinations on a complaint

- 16.2.1 Where a complaint has been investigated but the investigation has not been subject to special procedures, or a complaint has been handled in other ways, the outcome of the complaint should include a determination of whether either:
- a. the service provided by the Service Police force was acceptable
  - b. the service provided by the Service Police force was not acceptable
  - c. the complaint handler is unable to determine if the service provided was acceptable
- 16.2.2 **In relation to an investigation not subject to special procedures, the investigator will offer an opinion in the report.** However, the final determination will be made by the Appropriate Authority. In relation to a complaint that has been handled in other ways, this determination should be made by the complaint handler.

- 16.2.3 The determination should set out whether the service provided by the respective Service Police force was of an acceptable standard or not, in accordance with the standards of that force. In addition, the person making the determination should apply an objective test: that of a reasonable person in possession of the available facts. Where the service provided by the Service Police was not of an acceptable standard, the determination should identify whether this was due to the actions of an individual or organisational failings, or a combination of the two.
- 16.2.4 The person making the determination should try to draw a conclusion as to whether the service provided was acceptable or not. This may not always be possible, such as where there is insufficient information available to reach any firm conclusions on the service provided.
- 16.2.5 Whatever determination is reached, the complainant must be provided with sufficient information to understand the rationale for the findings.

### **16.3 Remediating dissatisfaction**

- 16.3.1 On receipt of an investigation report, or at the conclusion of handling in other ways, the Appropriate Authority should consider what action can and should be taken as part of the outcome to provide a remedy where something has gone wrong.
- 16.3.2 When considering possible remedies, the Appropriate Authority should have regard to the principles of reasonable and proportionate handling.
- 16.3.3 Effective remedies could include:
- a. an apology (although it is not always necessary to wait until the end of handling a complaint before giving an apology, if it becomes apparent that an apology is appropriate)
  - b. an explanation of the circumstances surrounding the incident that gave rise to the complaint or of other aspects relating to the complaint
  - c. committing to review a policy or procedure to ensure that it remains fit for purpose
  - d. holding a meeting to discuss service improvement between the Appropriate Authority, the complainant or interested people, and other suitable attendees
  - e. providing mediation if both parties are open to it, particularly where there is a strong likelihood of the complainant encountering the same member of a Service Police force again, or if serving or working on the same military establishment
  - f. returning seized property, where it is appropriate and lawful to do so
  - g. sharing evidence of learning or service improvement

- 16.3.4 The Service Police Complaints Commissioner (SPCC), Defence Council or a single Service Board may make recommendations with a view to remedying the dissatisfaction of a complainant either:<sup>103</sup>
- a. by the SPCC, Defence Council or a single Service Board, to the Appropriate Authority, when the relevant review body upholds a review (see Chapter 17)
  - b. by the SPCC, to the Appropriate Authority, at the conclusion of an independent or directed investigation into a complaint
  - c. by the Defence Council or a single Service Board, following a local investigation into a complaint for which they are the Appropriate Authority – in this case the recommendation would be made to the relevant Provost Marshal whose conduct the complaint relates to
- 16.3.5 The remedies recommended by the SPCC, the Defence Council or a single Service Board may include making an apology to the complainant or returning any property seized to them. However, other than paying compensation (as the Regulations do not allow recommendations for compensation), any recommendation can be made under this power where it is considered appropriate to remedy the dissatisfaction expressed by the complainant.<sup>104</sup>
- 16.3.6 It is important that a recommendation cannot determine the lawfulness of Service Police actions and therefore should not imply that action has been taken lawfully. A recommendation should only be issued where the investigation or handling of the complaint has properly established that the remedy would be appropriate, reasonable and lawful. The person making the recommendation should be mindful of whether there are, or are likely to be, any ongoing proceedings that may make a recommendation inappropriate.
- 16.3.7 The person to whom the recommendation is made must respond to the SPCC, the Defence Council or single Service Board (as appropriate) within 28 days (starting with the day after the day that the recommendation is made). The response must include:
- a. whether they accept the recommendation
  - b. if they do, the steps they propose to take to give effect to the recommendation
  - c. if they do not, the reasons why
- 16.3.8 The person making the recommendation must send a copy of it and the response to all of the following:
- a. the complainant
  - b. any interested person
  - c. the person complained against (if any), unless the person making the recommendation considers that doing so might prejudice any investigation

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<sup>103</sup> See Regulation 68.

<sup>104</sup> See Regulation 68(3)(c).

- 16.3.9 Where necessary, the SPCC, Defence Council or single Service Board may extend the time limit for a response. However, a response must still be provided before the end of the extended timeframe.

## **16.4 Recommendations of the SPCC**

- 16.4.1 As well as the power to make a recommendation that remedies the dissatisfaction of a complainant, the SPCC can also make recommendations where there is a potential area of organisational learning for a Service Police force.<sup>105</sup> They may, for example, recommend a change to policy, guidance, training or practice where they believe this may improve policing practice or prevent a recurrence of something that went wrong.
- 16.4.2 The SPCC can also make recommendations in relation to a review, or where a report has been received for a directed or independent investigation, or where an independent investigation has been carried out by the SPCC personally.<sup>106</sup>
- 16.4.3 A recommendation can be made to any person where the report relates to a complaint, conduct matter, or death or serious injury (DSI) matter. In all other cases, the SPCC can only make a recommendation to the Defence Council, a single Service Board, or a member of a Service Police force. All recommendations must be published.
- 16.4.4 A recommendation could include a recommendation that the person's conduct appears to justify the institution of administrative procedures. Where administrative procedures are brought as a result of any matter dealt with by the SPCC, the Appropriate Authority must notify the SPCC of the outcome of those procedures.

## **16.5 Action on receipt of an investigation report of a DSI matter – local, directed and independent investigations**

- 16.5.1 On receipt of an investigation report of a DSI matter, the SPCC must determine whether the report indicates that a member of a Service Police force may have committed a Service offence or behaved in a manner that would justify the initiation of administrative action procedures (see the glossary at Annex A). The SPCC may also make a determination on any other matter dealt with in the report.
- 16.5.2 Where the SPCC determines that the report does indicate that a member of a Service Police force may have committed a Service offence or behaved in a manner that would justify the initiation of administrative action procedures, they must notify the Appropriate Authority. The Appropriate Authority must then record the matter as a recordable conduct matter. The investigator of the DSI matter must then investigate the matter as a conduct matter. As with all recordable conduct matters, the Appropriate Authority must consider whether it should be referred to the SPCC.

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<sup>105</sup> See Regulation 3.

<sup>106</sup> See Regulation 69.

## **16.6 Action on receipt of an investigation report of a complaint or recordable conduct matter – local investigations**

16.6.1 On receipt of a report of a local investigation of a complaint or recordable conduct matter, the Appropriate Authority must determine all of the following:

- a. whether the report indicates that a Service offence may have been committed by a person to whose conduct the investigation relates, and whether the circumstances are such that it is appropriate for it to be passed to the 'appropriate prosecutor'<sup>107</sup>
- b. with regards to any member of a Service Police force whose conduct the investigation relates:
  - a. whether or not they have a case to answer in respect of misconduct, gross misconduct or no case to answer
  - b. what action, if any, the Appropriate Authority must or will take in respect of the matters dealt with in the report

16.6.2 The Appropriate Authority must also make a determination as to any other matter dealt with in the report (apart from the one already required above) and determine what other action it will take (if any). These decisions are for the Appropriate Authority, not the investigator. They must be made in all investigations, whether or not the investigation is subject to special procedures, and whether or not there are any people whose actions were under investigation.

## **16.7 Action on receipt of an investigation report of a complaint or recordable conduct matter – directed and independent investigations**

16.7.1 On receipt of a report of a directed or independent investigation, the SPCC will determine whether the report indicates that a Service offence may have been committed, and whether the circumstances are appropriate for the prosecutor to consider. The SPCC will also seek the views of the Appropriate Authority on whether any person investigated has a case to answer for misconduct, gross misconduct or no case to answer, and any other matters dealt with in the report.

16.7.2 The SPCC should receive the Appropriate Authority's views (if any) on these matters as soon as practicable, and definitely within 28 days (starting with the day after the SPCC seeks these views), unless the time limit is extended by the SPCC. Also, the Appropriate Authority should provide their views (if any) contained in the report. Once the SPCC has received and considered any views of the Appropriate Authority, the SPCC will determine whether any person has a case to answer for misconduct, gross misconduct or no case to answer.

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<sup>107</sup> 'Appropriate prosecutor' is defined under the Regulations as the person that a Service policeman would have been under a duty to refer the case to under Section 116 of the Armed Forces Act 2006 had it been investigated by a Service Police force.

## 16.8 Communicating the outcome

### Complaints and interested people

- 16.8.1 The Appropriate Authority must inform the complainant and/or interested person(s) of the outcome of the handling of a complaint, recordable conduct matter or DSI matter. This must be done promptly, and in any event within five working days of the outcome. In a directed or independent investigation, it is the responsibility of the SPCC to inform the complainant and/or interested person of the outcome.
- 16.8.2 The complainant and/or interested person must be provided with sufficient information to ensure that they are properly informed. This should include a written explanation that contains the following:
- a. how the matter has been handled and its progress
  - b. the actions that have been taken or are to be taken
  - c. the findings and the outcome of the matter
  - d. if appropriate, the reasons for not taking certain actions where this was in line with reasonable or proportionate handling
  - e. the progress of any disciplinary or criminal proceedings brought in relation to, or arising from, any matter that was subject of the complaint, recordable conduct or DSI matter
  - f. the outcome of any disciplinary or criminal proceedings (if any)
  - g. where an appeal is brought against the outcome of such proceedings, the fact and outcome of the appeal
  - h. where it was considered reasonable or proportionate to take no further action in relation to a matter, the reasons for this
  - i. any information about any next steps in the matter
- 16.8.3 In addition to providing the information in writing, it may also be appropriate to use another method that better meets any individual's needs, to ensure that the complainant or interested person fully understands the decisions that have been made. Providing information and investigation reports to a complainant or interested person will always be subject to certain exceptions (see Chapter 10.8).
- 16.8.4 Where a complaint has been subject to a local investigation, or handled in other ways, the Appropriate Authority must also inform the complainant about all of the following:
- a. their right to apply for a review of the outcome of their complaint
  - b. who the application for a review should be made to
  - c. where the relevant review body is the SPCC, the reason why

- d. there being no right of review to the SPCC where the Defence Council or single Service Board is the relevant review body
- e. the time limit for applying for the review, and what should be included in the application

16.8.5 The complainant should be advised that an application for a review must be received within 28 days of the day after the day that the complainant is sent the information). They should be sent the written communication on the day it is dated.

## **16.9 Person complained about or to whose conduct the matter relates (if any)**

16.9.1 It is important that any person whose actions are under consideration receives a clear explanation of the outcome of the handling of the matter, wherever possible.

16.9.2 Following an investigation, where either the SPCC does not recommend (in a directed or independent investigation) that administrative action procedures should be initiated against the person complained against, or the Appropriate Authority determines that there is no case to answer for misconduct or gross misconduct, they must provide that person with a copy of the report on the investigation, or the parts of it that relate to that person.<sup>108</sup>

16.9.3 This information should not be provided if the Appropriate Authority (or the SPCC in a directed or independent investigation) believes that either:

- a. it might prejudice any investigation or proceedings
- b. it might prejudice any subsequent review of the investigation
- c. there are restrictions on the disclosure of sensitive information (for example, where information disclosure could cause damage to national security, international relations or the economic interests of the UK)<sup>109</sup>

16.9.4 Where a complaint has been the subject of a local investigation, or handled in other ways, there is a possibility that the complainant may apply for a review of the outcome, which could result in a change to the conclusions reached initially. This should be highlighted to any person complained about.

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<sup>108</sup> See Regulation 59.

<sup>109</sup> See Regulation 81.



## 16.10 Publication

- 16.10.1 The SPCC is responsible for publishing investigation reports or summaries following directed or independent investigations. In the majority of cases, they will do this in the interests of transparency. However, information may not be published where the SPCC believes there are sound reasons for non-disclosure of information.
- 16.10.2 Appropriate Authorities should consider whether it is appropriate to publish reports and summaries following local investigations or other handling. This may be appropriate in the interests of transparency. However, due regard must be given to data protection issues and reports may require some redaction.

# 17 Reviews

## 17.1 The right of review

- 17.1.1 Where a complaint has been recorded, the complainant has a right to apply for a review of the outcome. A flowchart is also provided at Annex I. This applies whether the complaint has been investigated by the Appropriate Authority or handled in other ways. The review will consider whether the outcome of the handling of the complaint is reasonable and proportionate. Where the relevant review body finds that the outcome is not reasonable and proportionate, it will uphold the review.
- 17.1.2 There is no right to apply for a review of the outcome of a directed or independent investigation, of a complaint that has been handled outside of the Regulations (where it has not been recorded), or where the person making the complaint is not eligible to be a complainant.

## 17.2 Who is the 'relevant review body'?

- 17.2.1 The Appropriate Authority should decide on the relevant review body, and this must be communicated to the complainant (see the flowchart at Annex I). Depending on the circumstances of the complaint, the application for a review will be considered either by the Service Police Complaints Commissioner (SPCC), the Defence Council, or the appropriate single Service Board.<sup>110</sup>
- 17.2.2 The SPCC is the relevant review body from any of the options listed below (a-g):
- a. the Appropriate Authority is the Defence Council or a single Service Board
  - b. the complaint is about the conduct of a senior officer
  - c. the Appropriate Authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify disciplinary proceedings or administrative action procedures against a member of a Service Police force, or would not infringe a person's rights under Article 2 or 3 of the European Convention on Human Rights
  - d. the complaint has been, or must be, referred to the SPCC (under Regulation 13)
  - e. the SPCC is treating the complaint as having been referred to the SPCC
  - f. the complaint arises from the same incident as a complaint falling within (b) to (e)
  - g. any part of the complaint falls within (b) to (f)
- 17.2.3 In any other case the relevant review body is either:
- a. the Defence Council where the complaint relates to the Defence Serious Crime Unit

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<sup>110</sup> See Regulation 2(5).

b. the appropriate single Service Board for the Service Police force the complaint relates to

- 17.2.4 The test at paragraph 17.2.2 (c) must be assessed on the substance of the complaint alone, not on the apparent merit of the allegations or with hindsight after the complaint has been dealt with.
- 17.2.5 When considering the test at paragraph 17.2.2(f), Appropriate Authorities should consider whether the complaints arise from the same time and place and involve the same or similar people serving with the Service Police. This includes where the complaints are made by different complainants. A number of separate complaints that are otherwise unconnected but arise from the same large-scale event should not be considered as having arisen from the same incident.
- 17.2.6 The relevant review body must ensure that anyone considering applications for reviews has sufficient training. The consideration of a review should not be handled by either:
- a. anyone who was involved in the handling of the complaint, including those responsible for deciding whether the complaint should be recorded, deciding how the complaint should be handled or providing updates
  - b. anyone who has a close personal connection to any person whose conduct is complained about, to the complainant or to the incident itself

### **17.3 Receiving an application for review**

- 17.3.1 Where an application for review is received incorrectly, the body must forward the application to the relevant review body and notify the complainant that it has been forwarded. This should be done digitally, as soon as reasonably practicable.
- 17.3.2 An acknowledgment of an application for a review should be sent to the complainant by the relevant review body. This should tell the complainant what they can expect to happen next and that they can expect to hear about the outcome within 28 days. It should also give the complainant a point of contact for any queries.
- 17.3.3 The relevant review body must also notify the Appropriate Authority, any interested person and the person complained about (if any). The person complained about may be notified via the Appropriate Authority. Once notified that an application for a review has been made, the Appropriate Authority should not take any steps that would prejudice the review or any action that may be taken as a result.
- 17.3.4 The relevant review body must request any information from any person which it considers necessary to deal with a review. Where required, the Appropriate Authority must provide the relevant review body with a copy of the report of the investigation, and any information requested concerning the Appropriate Authority's determinations at the conclusion of the investigation. All documents or evidence created or obtained during the handling of a complaint should also be provided.

## 17.4 Validity

- 17.4.1 There are a number of reasons why an application for a review may be invalid. If it is invalid, the complainant should be told and the reason explained clearly.
- 17.4.2 When deciding whether the application for a review is valid, the relevant review body will need to consider whether the application is complete.
- 17.4.3 An application for a review must be in writing (the **application for review of a Service Police outcome form** can be found on the SPCC's website at: [www.thespcc.org.uk/apply-review](http://www.thespcc.org.uk/apply-review)). It must include all of the following information:
- a. the details of the complaint
  - b. the date that the complaint was made
  - c. the name of the Appropriate Authority whose decision is the subject of the application
  - d. the date that the complainant was provided with the details about their right of review at the conclusion of the investigation or other handling of their complaint
- 17.4.4 However, the relevant review body may decide to consider a review even though it does not comply with one or more of these requirements, unless the lack of information makes it impossible to identify the case that the application relates to. In some circumstances, it may be appropriate to contact the complainant to clarify this or any points they have raised. If, after taking all reasonable steps to contact the complainant, it has not been possible to make contact, or it has not been possible to gather sufficient information to conduct the review, the application may be considered invalid.

## 17.5 Is there a right to apply for a review?

- 17.5.1 Only a complainant, or someone acting on their behalf, can make an application for a review in relation to a complaint. If anyone else tries, the application will be invalid.
- 17.5.2 Before an application can be made, there must be a written notification of the outcome of the complaint.

## 17.6 Has the application been made in time?

- 17.6.1 Applications for reviews must be made within 28 days, starting with the day after the day the complainant was given the information, at the conclusion of the investigation or other handling of their complaint. Where the application was made to the wrong review body, any time elapsing between the application being received by the Defence Council, single Service Board, or the SPCC and forwarded on to the correct relevant review body will not be taken into account for the purposes of the 28-day period.
- 17.6.2 A complainant cannot exercise their right to apply for a review before the completion of the handling of a complaint. However, if the handling is complete, but any of the information about the complainant's right to apply for a review that the Appropriate Authority was obliged to provide was not given, the application should not be treated as out of time.

- 17.6.3 The relevant review body may extend the period for making an application for a review where it is satisfied that, because of the special circumstances of a case, it is just to do so. This should be considered on a case-by-case basis. The following matters should be taken into account (though this is not an exhaustive list):
- a. if a review application is submitted late, the complainant should explain the reasons for the delay, which must be considered when deciding whether to accept the application – the explanation should include:
    - whether the delay was beyond the complainant's control
    - whether they took all reasonable steps to submit the review on time
    - any specific vulnerabilities or needs they may have
  - b. the subject matter of the complaint – whether it is a particularly serious case or one that it would be in the public interest to consider
  - c. links to other complaints being handled or reviewed
  - d. the length of the delay beyond the 28 days for receipt of the application
  - e. fairness – for example, the potential impact on the complainant or any other member of the public, and on any person complained about
- 17.6.4 The fact that a person complained about has been told about the conclusion of an investigation, or other handling, before an application for review is made does not prevent a review from being conducted, and disciplinary proceedings or other outcomes may still follow a review.
- 17.6.5 If, having considered any special circumstances, the application for a review is judged to be out of time and the relevant review body is not satisfied that it is just to extend the time period, the application should be treated as invalid and not be considered further.

## **17.7 Notifying the complainant where the application is invalid**

- 17.7.1 The complainant should be informed of the decision to treat the application as invalid in writing (and by other means where appropriate, taking into account any particular needs or requests) as soon as reasonably practicable. The reason should be explained clearly to the complainant.

## **17.8 Conducting the review**

- 17.8.1 An application for a review offers the opportunity to consider whether the complaint outcome is reasonable and proportionate and, if not, to address it. Conducting a review should not be merely a quality check of what has happened before. The reviewer should come to their own conclusions about whether the outcome is reasonable and proportionate.

- 17.8.2 While each review must be considered on a case-by-case basis, a consistent approach should be taken to considering reviews overall. The consideration of any review should be conducted fairly and in good faith. Decisions must be reached as soon as practicable.
- 17.8.3 Any representations made by the complainant, the person who is complained about (if any) and the Appropriate Authority should be given due consideration.
- 17.8.4 If the reviewer concludes that the outcome was not reasonable and proportionate, the review should be upheld. In reaching a decision, the reviewer should take into account whether it is appropriate to the circumstances of the individual complaint, rather than the process followed to reach that outcome.

## 17.9 A decision to take no further action

- 17.9.1 There are various reasons why a complaint handler may have decided to take no further action in relation to a complaint or aspects of it. **However, the reviewer should consider whether there were steps that could or should have been taken to provide a reasonable and proportionate outcome.**
- 17.9.2 For example, where no further action has been taken because the complaint handler believed that further information was needed from the complainant, the reviewer should consider what efforts were made to communicate with the complainant, any communication preferences or needs of the complainant, any attempts to communicate through their representative (if any) and whether they consider that further information from the complainant was necessary.

## 17.10 Findings and determinations

- 17.10.1 When deciding whether any findings or determinations are reasonable and proportionate, the reviewer should first consider whether these were reached in relation to all matters required. The reviewer should then consider whether those findings and determinations were reasonable and proportionate. In doing this, they should consider, for example:
- a. Was the complaint fully understood and were all allegations or concerns addressed?
  - b. Were reasonable lines of enquiries taken to be able to provide a reasonable and proportionate outcome?
  - c. Was due regard given to relevant guidance?
  - d. If any aspects of the complaint were not addressed, or any lines of enquiry were not pursued, were there sound reasons for this?
  - e. Was information or evidence weighed appropriately and fairly?
  - f. Do the findings or determinations reached logically follow from the information or evidence obtained?

## **17.11 Actions proposed**

- 17.11.1 When deciding whether any actions proposed are reasonable and proportionate, the reviewer should consider all of the following:
- a. whether due regard was given to this Guidance and any applicable code of conduct, protocol or policy
  - b. whether the complaint handler attempted to understand the outcome the complainant was seeking and gave that due consideration
  - c. whether the proposed actions have sought to remedy the issues raised by the complainant, so far as is reasonably possible
  - d. whether the proposed actions are reasonable and proportionate, considering all the circumstances
  - e. whether actions have been proposed or taken in respect of any learning or other issues identified through the handling of the complaint

## **17.12 Other issues identified while undertaking a review**

- 17.12.1 Sometimes issues with complaints handling may be identified that have not prevented a reasonable and proportionate outcome. These would not be a reason to uphold the review. However, such issues should be fed back to the Appropriate Authority as a part of the relevant review body's oversight role.
- 17.12.2 Appropriate Authorities should ensure that processes are in place to collate any issues identified with complaint handling, to identify any trends that can be addressed with the Appropriate Authority. Any issues like this should be noted to the complainant as part of the decision they receive.

## **17.13 Reviews of the outcome of complaints dealt with in other ways**

- 17.13.1 Where the Defence Council or a single Service Board is the relevant review body and finds that the outcome is not reasonable and proportionate, they may either:
- a. recommend that the Appropriate Authority refer it to the SPCC, if the complaint has not been previously referred
  - b. recommend that the Appropriate Authority investigate the complaint
  - c. make a recommendation with a view to remedying the dissatisfaction expressed by the complainant concerned
- 17.13.2 Where the SPCC is the relevant review body and finds that the outcome is not reasonable and proportionate, they may either:
- a. determine that the complaint should be investigated
  - b. make a recommendation with a view to remedying the dissatisfaction expressed by the complainant concerned

## 17.14 Reviews of the outcome of complaints that have been investigated

17.14.1 Where, following a local investigation, the Defence Council or a single Service Board is the relevant review body and finds that the outcome is not reasonable and proportionate, they may either:

- a. recommend that the Appropriate Authority re-investigate the complaint
- b. recommend that the Appropriate Authority refer the complaint to the SPCC, if it has not previously been referred
- c. make a recommendation to the Appropriate Authority in respect of any member of a Service Police force:
  - i. that it appears the person has a case to answer in respect of misconduct or gross misconduct, or has no case to answer in relation to the person's conduct which the investigation related to
  - ii. that the person's conduct appears to justify administrative action procedures (see the glossary at Annex A)
- d. make a recommendation with a view to remedying the dissatisfaction of a complainant
- e. make a recommendation to the Appropriate Authority that they notify, and send a copy of the report, to the appropriate prosecutor (as the report indicates that a Service offence may have been committed)

17.14.2 Where, following an investigation, the SPCC is the relevant review body and finds that the outcome is not a reasonable and proportionate outcome, they may either:

- a. make their own findings (in place of, or in addition to, the findings of the investigation)
- b. direct that the complaint be re-investigated, and determine the mode of investigation
- c. make a recommendation to the Appropriate Authority in respect of any member of a Service Police force:
  - i. that it appears the person has a case to answer in respect of misconduct or gross misconduct, or has no case to answer in relation to the person's conduct which the investigation related to
  - ii. that the officer's conduct appears to justify administrative action procedures
- d. make a recommendation under Regulation 68 with a view to remedying the dissatisfaction of a complainant
- e. make a recommendation to the Appropriate Authority that they notify, and send a copy of the report, to the appropriate prosecutor (as the report indicates that a Service offence may have been committed)



- 17.14.3 Any decision by a relevant review body about whether to recommend notifying the appropriate prosecutor should be made in light of the findings of the review and the evidence gathered during the handling of the complaint. The reasons given by the Appropriate Authority for not referring the report to the appropriate prosecutor should also be taken into account. A full rationale will be required from the relevant review body if it decides not to recommend making a referral, despite the report indicating that a Service offence may have been committed.

## **17.15 Notifications of the outcome**

- 17.15.1 After undertaking a review, the relevant review body must notify all of the following about the outcome of the review, and the reasons for their decision:
- a. the Appropriate Authority
  - b. the complainant
  - c. any interested person
  - d. the person complained against (if any), unless it would prejudice an investigation
  - e. the re-investigation of the complaint (notification may be given via the Appropriate Authority)
- 17.15.2 The outcome should be communicated in writing (and by other means where appropriate, taking into account any particular needs or requests) and should use clear language, avoiding use of jargon wherever possible. Recipients should be given sufficient information to understand what decisions and recommendations have been made, and why.
- 17.15.3 Where the relevant review body recommends (or in the case of the SPCC, directs) investigation or re-investigation, it is good practice to outline what the reviewer considers should be addressed. This makes clear to the complainant and complaint handler what is expected from the investigation or re-investigation.

## **17.16 Appropriate Authority responses to the outcome of a review**

- 17.16.1 Where the SPCC has made directions, the Appropriate Authority must comply with those directions.
- 17.16.2 Where recommendations have been made by the Defence Council or single Service Board (or by the SPCC), the Appropriate Authority must consider them and respond in writing within 28 days (starting with the day after the day the recommendation was made). The response from the Appropriate Authority must include:
- a. whether they accept the recommendation
  - b. if they do, the steps they propose to take to give effect to the recommendation
  - c. if they do not, the reasons why

- 17.16.3 Where the Appropriate Authority does not agree with the recommendation, they must provide a clear rationale for why it will not be followed. It is therefore important that the reasons for any recommendations made are outlined clearly by the relevant review body.
- 17.16.4 The Appropriate Authority may also wish to discuss any recommendations made with the reviewer before deciding whether to accept them. Even where they disagree with the recommendation, the Appropriate Authority may, having considered the rationale, propose an alternative. However, the expectation is that recommendations will be complied with.
- 17.16.5 The person making the recommendation must send a copy of the recommendation and the response to all of the following:
- a. the complainant
  - b. any interested person
  - c. the person complained against (if any), unless the person making the recommendation considers that to do so might prejudice any investigation (including any criminal investigation)
- 17.16.6 The SPCC, Defence Council or single Service Board may extend the time limit for a response.

# 5

## **Part 5: General matters**

# 18 Support available

## 18.1 Military HR policy and procedure queries

Personal questions not answered within this publication and cases of doubt over eligibility or entitlement are to be directed through chains of command.

To access the correct support, please go through the following routes:

**Unit HR first point of contact** for Service personnel for any aspect of personnel administration.

Further information on statutory (i.e. legal) entitlements can be found on [GOV.UK](#) and the [Advisory, Conciliation and Arbitration Service \(ACAS\)](#) website.

Please see JSP 770 in respect of the overarching welfare policy.

# 19 Roles and responsibilities

The SPCC expects this Guidance to be applied in accordance with the following generic roles and responsibilities.

Role	Key responsibilities in relation to this Guidance
Service person	<b>Responsible for:</b> <ul style="list-style-type: none"><li>• familiarising yourself with the Guidance as it applies to you</li></ul>
Line manager and/or chain of command	<b>Responsible for:</b> <ul style="list-style-type: none"><li>• familiarising yourself with the Guidance as it applies to you</li><li>• ensuring complainants are aware of the appropriate advice and support available to help them through the Service Police complaints process</li></ul>

# 20 Document information

## 20.1 Document coverage

This Guidance supersedes all previous Ministry of Defence procedures on Service Police complaints.

This Guidance is listed in the Policy and Guidance Portal.

## 20.2 Document information

Filename:	Statutory Guidance
Approving authority:	Service Police Complaints Commissioner

## 20.3 Document versions

Version	Publication date	Revision history	Revised pages
1	October 2025	Original version	

The SPCC will review this Guidance periodically, or when changes to legislation or best practice dictates.

## 20.4 Linked documents

JSP number	JSP name
JSP 831	Redress of Individual Grievances: Service Complaints
JSP 770	Tri-Service Operational and Non-Operational Welfare Policy



# Annexes

# Annex A: Glossary

## **Administrative action procedures**

Administrative action procedures, as defined by the Regulations, refer to the processes used to assess the conduct of a member of a Service Police force. These procedures determine whether the behaviour amounts to misconduct or gross misconduct and if any administrative action is required.

## **Adversely affected**

A person is adversely affected if they suffer any form of loss or damage, distress or inconvenience, if they are put in danger or are otherwise unduly put at risk of being adversely affected.

## **Appropriate Authority**

In general terms, an Appropriate Authority is the Provost Marshal of the Service Police force that dissatisfaction is expressed about or, where a complaint relates to the conduct of an individual, the Provost Marshal who had direction and control over that person.

Where a complaint relates to the Provost Marshal, the Appropriate Authorities are:

- a. the Admiralty Board in relation to the Provost Marshal (Navy)
- b. the Army Board in relation to the Provost Marshal (Army)
- c. the Royal Air Force Board in relation to the Provost Marshal (Royal Air Force)
- d. the Defence Council in relation to the Provost Marshal (Defence Serious Crime Command)

## **Articles 2 and 3 of the European Convention on Human Rights**

Article 2 provides that everyone's life shall be protected by law.

Article 3 provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

## **Complaint handler**

Any person who has been appointed to handle a complaint. This includes, where a complaint is being investigated, the investigator.

## **Conduct**

Includes acts, omissions, statements and decisions (whether actual, alleged or inferred).



## **Conduct matter**

This refers to any issue that has not been part of a complaint but suggests that a member of a Service Police force may have committed a Service offence or acted in a way that could warrant starting administrative action procedures.

## **Criminal outcomes**

- **Guilty (criminal outcome)**
  - This refers to a finding or plea of guilt in a legal or Service disciplinary process.
  - An individual is charged and taken to the Military Court Service, and either pleads or is found guilty.
- **Charged (criminal outcome)**
  - A criminal charge has been formally brought against an individual by the Service Prosecuting Authority or the individual's Commanding Officer, following a referral by the Appropriate Authority.
- **Referred (criminal outcome)**
  - The complaint or matter has been passed on (referred) to another Appropriate Authority for further action.
  - For example, a case has met the Evidential Sufficiency Test, which is a Service Police threshold to refer a matter to the Service Prosecuting Authority or Commanding Officer.
  - A referral does not mean that an individual has been charged with an offence, but that the matter has been passed to the Appropriate Authority for consideration for charge.

## **Death or serious injury (DSI) matter**

Any matter (unless the circumstances are or have been the subject of a complaint or amount to a conduct matter) in, or as a result of which, a person has died or sustained serious injury.

## **Directed investigation**

An investigation conducted by the Appropriate Authority under the direction and control of the SPCC. The SPCC directs the investigation in terms of its scope, investigative strategy and findings of the report.

## **Disciplinary proceedings**

Proceedings in relation to a Service offence.

## **Formal handling**

A complaint or conduct matter that has been recorded and must be handled in accordance with the procedures set out in the Regulations.

## Gross misconduct

Within the context of the Service Police complaints system, gross misconduct means a breach of the professional standards that is so serious as to justify termination of membership of the Service Police force.

## Independent investigation

An investigation carried out by the SPCC. An independent investigation is often used for the most serious incidents.

## Informal handling

A complaint or conduct matter that has not been recorded (given 'formal status'), and is handled outside the requirements of the Regulations.

## Interested person

A person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter.

## Local investigation

An investigation carried out by the Appropriate Authority on its own behalf.

## Misconduct

A breach of the professional standards.

## Outcome definitions

- **Upheld**
  - The complaint was **found to be valid**, and the allegation was **supported by evidence**.
  - Disciplinary or learning opportunities may follow, depending on the severity.
- **Partially upheld**
  - Some parts of the complaint were **proven**, but **not all** aspects.
  - There may still be some form of action or recommendation.
- **Stayed (misconduct outcome)**
  - The investigation or complaint process has been **paused or suspended**, often due to **legal reasons** (such as ongoing criminal proceedings) or **other priorities**.
- **Not upheld (misconduct outcome)**
  - The complaint was **not supported by the evidence**, or it was found to be unsubstantiated.
  - No misconduct or breach of standards was identified.

- **Local resolution**

- The complaint was dealt with **informally**, without a full investigation.
- This is often used for **less serious issues**, aiming for early resolution between the complainant and officer or department involved.

- **No further action**

- The matter was **investigated**, but **no action** is being taken, or the complaint on its face did not reveal any matter which necessitated investigation.
- This might happen due to **insufficient evidence**, the issue being too minor, or other factors that make formal action unnecessary.

- **Other / withdrawn**

- A miscellaneous category when the outcome doesn't fit neatly into the above.
- This might include things like referrals to other bodies or internal actions not classified under the standard outcomes.

- **No outcome / still ongoing**

- The investigation is **not yet complete**, so no decision has been made about whether the case is upheld or not.

### **Person complained against**

In relation to a complaint about conduct of a member of a Service Police force, this means the person whose conduct is the subject matter of the complaint.

### **Person concerned**

In relation to an investigation of a complaint, this means the person who it appears – to the person investigating the complaint – may have committed a Service offence or behaved in a manner which would justify the initiation of administrative action procedures. In relation to an investigation of a recordable conduct matter, this means the person whose conduct is the subject of the investigation.

### **Professional standards**

The values and standards that apply to members of a Service Police force, which are set out in policies, and which they are required to comply with.

### **Recordable conduct matter**

A conduct matter that is required to be recorded by the Appropriate Authority under the Regulations or has been so recorded.

### **Recording**

Recording a complaint, conduct matter or DSI matter gives it formal status under the Regulations.

## **Relevant officer**

In relation to a DSI matter, this means the member of a Service Police force who either:

- a. arrested the person who has died or suffered serious injury
- b. had that person in their custody at the time of the death or serious injury
- c. that person had the contact in question with

Where there is more than one member of a Service Police force involved, it means the member who dealt with that person last before the death or serious injury occurred.

## **Relevant Service offence**

An offence under Section 42 of the Armed Forces Act 2006 for which the sentence is fixed by law. A person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more.

## **Relevant review body**

The SPCC, where the Appropriate Authority is the Defence Council or a single Service Board, or where either:

- a. the complaint is about the conduct of a 'senior officer'
- b. the Appropriate Authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify disciplinary proceedings or administrative action procedures against a member of a Service Police force
- c. the Appropriate Authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not infringe a person's rights under Article 2 or 3 of the European Convention on Human Rights (within the meaning of the Human Rights Act 1998)
- d. the complaint has been or must be referred to the SPCC
- e. the SPCC has treated the complaint as though it has been referred
- f. the complaint arises from the same incident as a complaint falling within (a) to (e)
- g. any part of the complaint falls within (a) to (f)

In any other case the relevant review body is either the Defence Council or relevant single Service Board.

## **Senior officer**

Under the Regulations this means a member of a Service Police force holding a rank of or above that of either:

- a. Lieutenant Commander in relation to the Royal Navy Police
- b. Major in relation to the Royal Military Police
- c. Squadron Leader in relation to the Royal Air Force Police

## **Service complaint**

A complaint made under the Service complaints system (JSP 831) that comes under the oversight of the Service Complaints Ombudsman. Under this system a Service person is able to make a complaint about any matter relating to their Service in the Armed Forces, unless it is an excluded matter under the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015.

## **Serious injury**

A fracture, deep cut, deep laceration or injury causing damage to an internal organ or the impairment of any bodily function.

## **Severity assessment**

An assessment requiring the person investigating to consider whether the conduct of the person concerned, if proved, would amount to a failure to meet the professional standards, and whether that conduct would become the subject of administrative action procedures.

## **Special procedures**

Procedures for investigations relating to either a recordable conduct matter, or a complaint where there is an indication that the person complained against may have committed a Service offence or the initiation of administrative action procedures is justified.

## **Voluntary referral**

A complaint or recordable conduct matter that does not need to be referred to the SPCC, but where the gravity of the subject matter or any exceptional circumstances justifies referral.

# Annex B: Definitions of referral criteria

## Serious assault

‘Serious assault’ is conduct that has resulted in an injury that amounts to actual bodily harm or a more serious injury. ‘Serious assault’ is interpreted in accordance with the law on what constitutes an assault occasioning actual bodily harm contrary as:

“The offence is committed when a person intentionally or recklessly assaults another, thereby causing actual bodily harm.”

Section 47 of the Offences Against the Person Act 1861<sup>111</sup>

The Crown Prosecution Service legal guidance on the charging standard for the offence of assault occasioning actual bodily harm should be consulted and applied in determining whether an allegation is one of assault occasioning actual bodily harm, as opposed to common assault.<sup>112</sup> Any allegation of an attempt, incitement, conspiracy, assistance or encouragement to commit assault occasioning actual bodily harm or a more serious offence must also be referred to the SPCC.

## Serious sexual assault

The SPCC deems an allegation that a member of a Service Police force has committed any sexual offence is, in light of their position, **likely to be serious**. The term ‘serious sexual offences’ refers to conduct by a person serving with the Service Police that constitutes a sexual offence under the Sexual Offences Acts 1956 to 2003.<sup>113</sup>

Sexual offences should be referred whether committed **while off or on duty**.

Any attempt, incitement, conspiracy, assistance or encouragement to commit any offence captured by the above must also be referred to the SPCC.

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<sup>111</sup> Section 47 of the Offences Against the Person Act 1861.

Available at: <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/47>

<sup>112</sup> Crown Prosecution Service guidance on offences against the person, incorporating the charging standard. Available at: [www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard](http://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard)

<sup>113</sup> Sexual Offences Act 2003.

Available at: <https://www.legislation.gov.uk/ukpga/2003/42/section/3>

## Serious corruption

Where an allegation of serious corruption is made, or potential serious corruption is otherwise identified, this requires referral to the SPCC.

Serious corruption refers to conduct that includes:

- any conduct that amounts to an improper exercise of a Service policeman's powers for the purpose of obtaining a benefit for themselves or a benefit or detriment for someone else, where a reasonable person would not expect them to exercise power for that purpose
- perverting the course of justice or other conduct that is likely to seriously harm the administration of justice, in particular the criminal justice system or the Service Justice System
- payments or other benefits or favours received in connection with the performance of duties amounting to an offence for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months
- abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship
- provision of confidential information in return for payment or other benefits or favours where the conduct could lead to a possible prosecution for an offence under Section 170 of the Data Protection Act 2018, or a more serious offence<sup>114</sup>
- extraction and supply of seized controlled drugs, firearms or other material
- any other abuse of position whether on or off duty, to take advantage of their position inappropriately or illegitimately, the authority of their position, or any powers conferred on them by virtue of their position, as a member of a Service Police force
- attempts, conspiracies, incitements, assistance or encouragement to do any of the above

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<sup>114</sup> Section 170 of the Data Protection Act.

Available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/170/enacted>.

## **Service offences or behaviour liable to lead to the initiation of administrative action procedures and which, in either case, are aggravated by discriminatory behaviour**

This refers to any Service offence or other behaviour liable to lead to the initiation of administrative procedures that is aggravated by discrimination on the grounds of a person's:<sup>115</sup>

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The SPCC is satisfied that respective referrals meet the mandatory referral criteria as set out in Regulation 13(1)(b)(iv) when the alleged incident is liable to lead to the initiation of administrative action procedures and relates to discriminatory behaviour on the grounds of a person's race, for example.

The criteria are met where the alleged behaviour, without the discrimination element, amounts to a Service offence or behaviour which is liable to lead to the initiation of administrative action procedures (see the glossary at Annex A) and it is alleged that discrimination was a reason for this behaviour.

The referral grounds require an assessment of the gravity of the underlying conduct, without the discrimination element (to decide if it is an allegation of a Service offence or behaviour liable to lead to the initiation of administrative action procedures – see the glossary at Annex A). It is not necessary to assess the gravity of the discrimination element, only that discrimination is alleged as an aggravating factor.

The form of the alleged discrimination may be direct through language or behaviour – for example, the use of offensive and discriminatory words or use of stereotypes to describe individuals. The complainant or interested person may allege that the conduct was motivated by discrimination. They may allege treatment that amounts to discrimination when compared with the treatment given to others. Although it is not for the complainant to prove that a member of a Service Police force discriminated against them, it is important that they are able to identify (where possible) how their treatment was discriminatory.

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<sup>115</sup> Section 4 of the Equality Act. Available at: [www.legislation.gov.uk/ukpga/2010/15/section/4](http://www.legislation.gov.uk/ukpga/2010/15/section/4)



To ascertain the background to the alleged discrimination, the person dealing with the complainant should encourage them to provide as much information as possible to articulate why they believe they were discriminated against.

## **Relevant Service offence**

A relevant Service offence means an offence under Section 42 of the Armed Forces Act 2006 (something which is an offence under the criminal law of England and Wales or would be an offence if done in England or Wales) where:

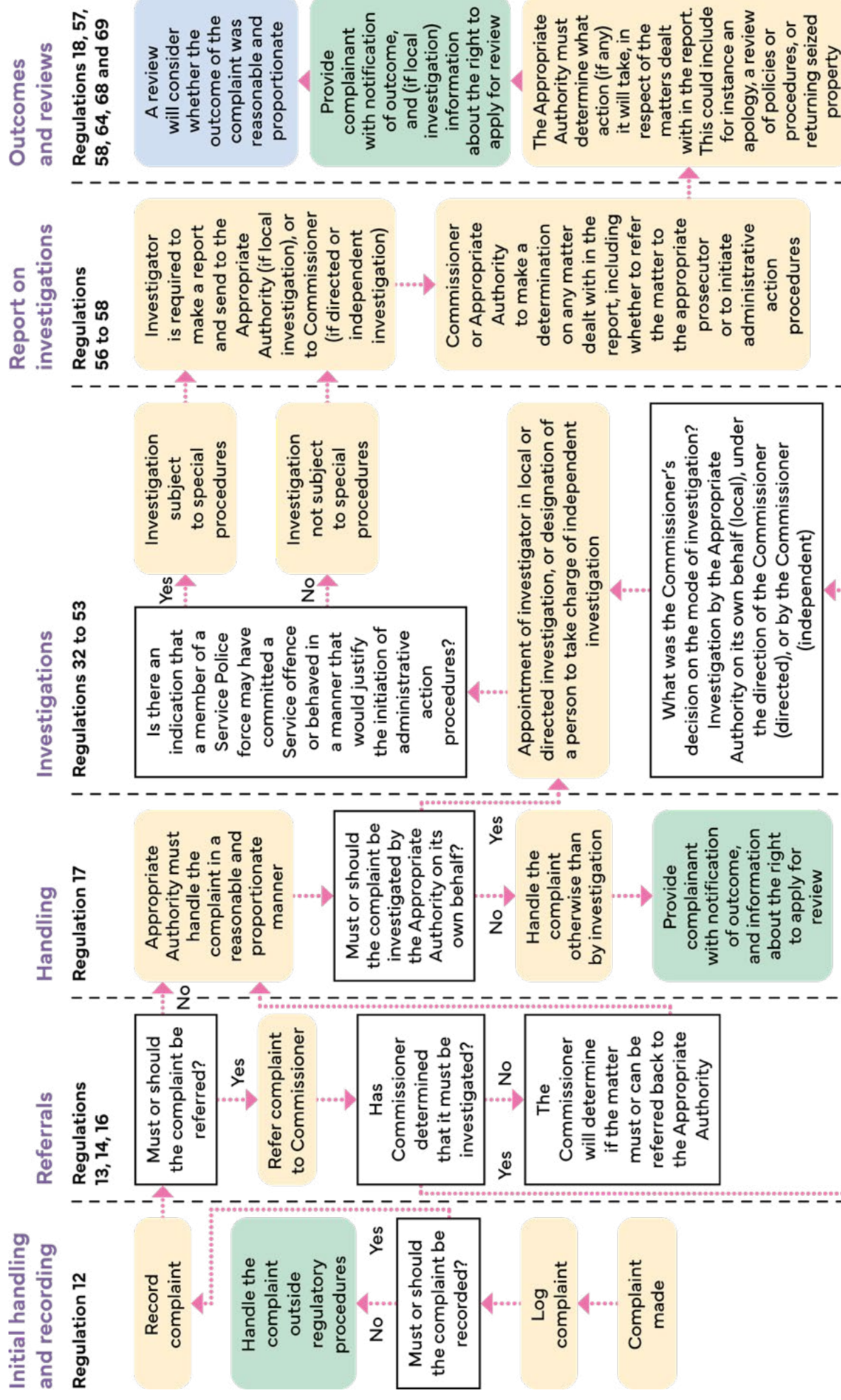
- the sentence is fixed by law
- a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more or might be so sentenced

To assess whether an offence meets this definition, guidance should be taken from sentencing guidelines for the offence in question. This assessment should not consider what the likely sentence would be, only whether the offence has the possibility to result in a sentence of imprisonment for seven years or more.

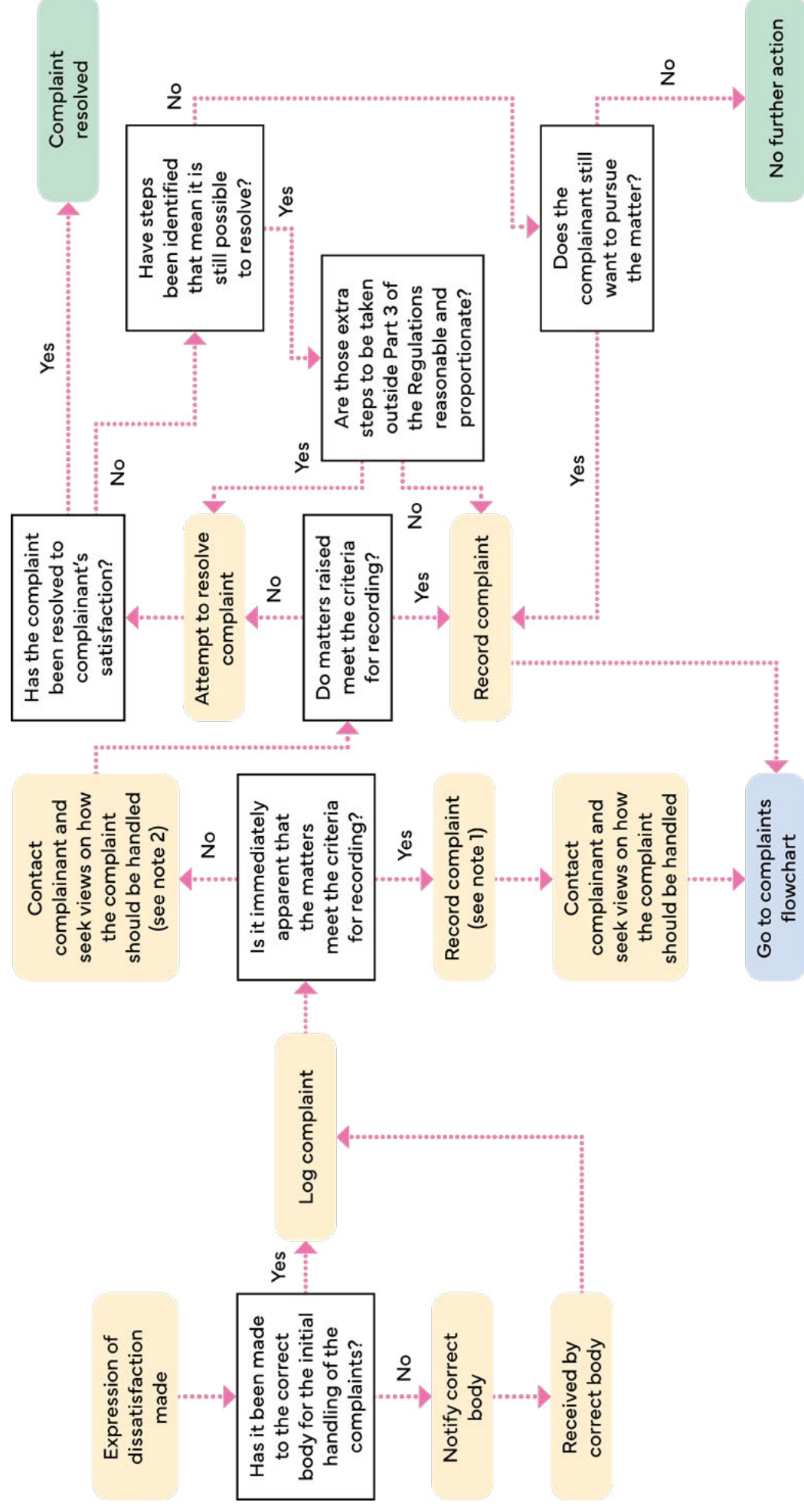
## **Complaints and conduct matters concerning Provost Marshals**

Appropriate Authorities must refer to the SPCC any conduct matter relating to a Provost Marshal. This includes where the Appropriate Authority is unable to satisfy itself, from the complaint alone, that the conduct complained of, if it were proved, would not justify disciplinary proceedings or administrative action procedures (see the glossary at Annex A).

# Annex C: Service Police complaints flowchart



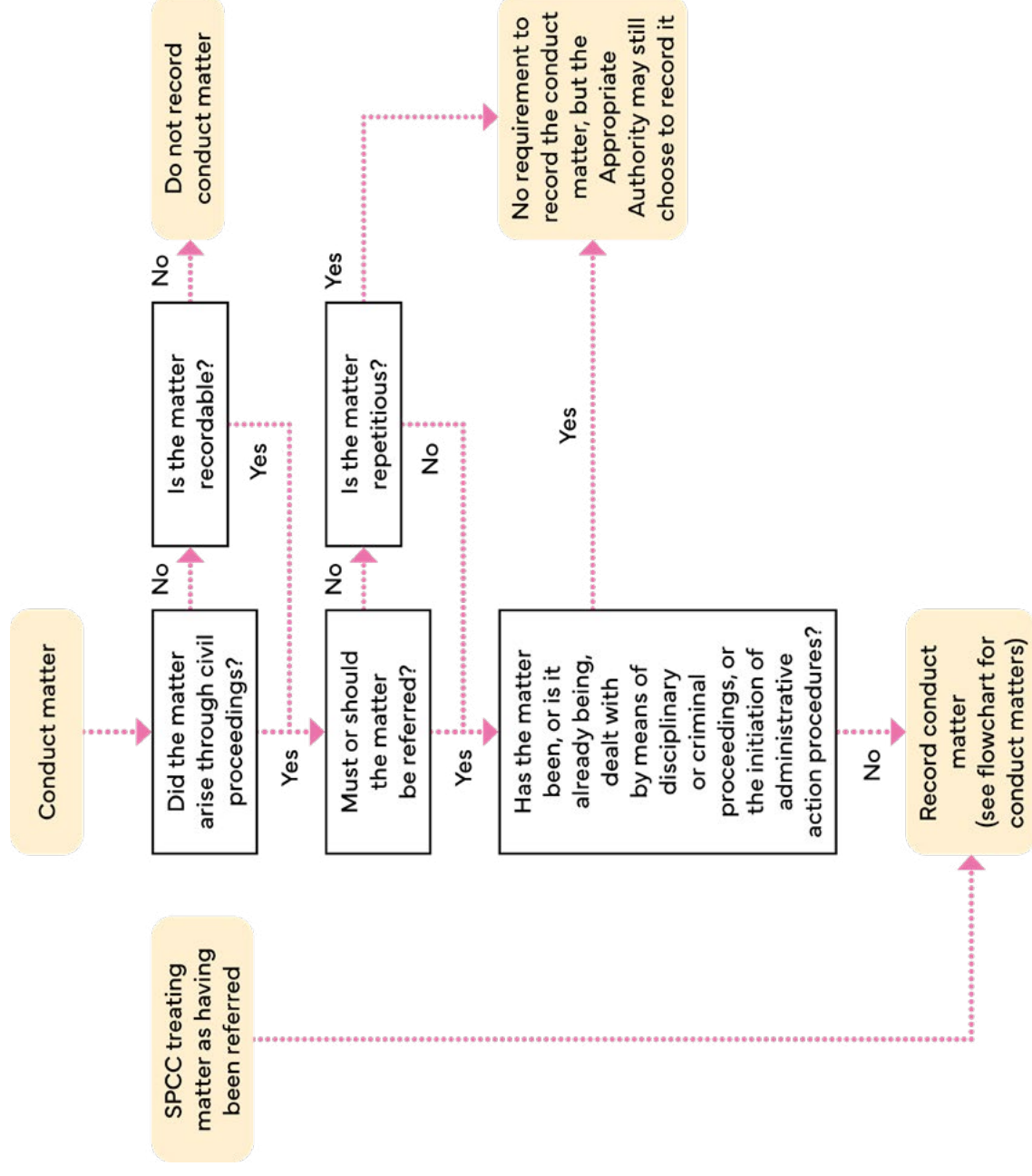
# Annex D: Initial handling of complaints flowchart



Note 1: Referrals to the SPCC must be made without delay and in any case not later than the end of the day after the day it becomes clear that it is a matter which must be referred.

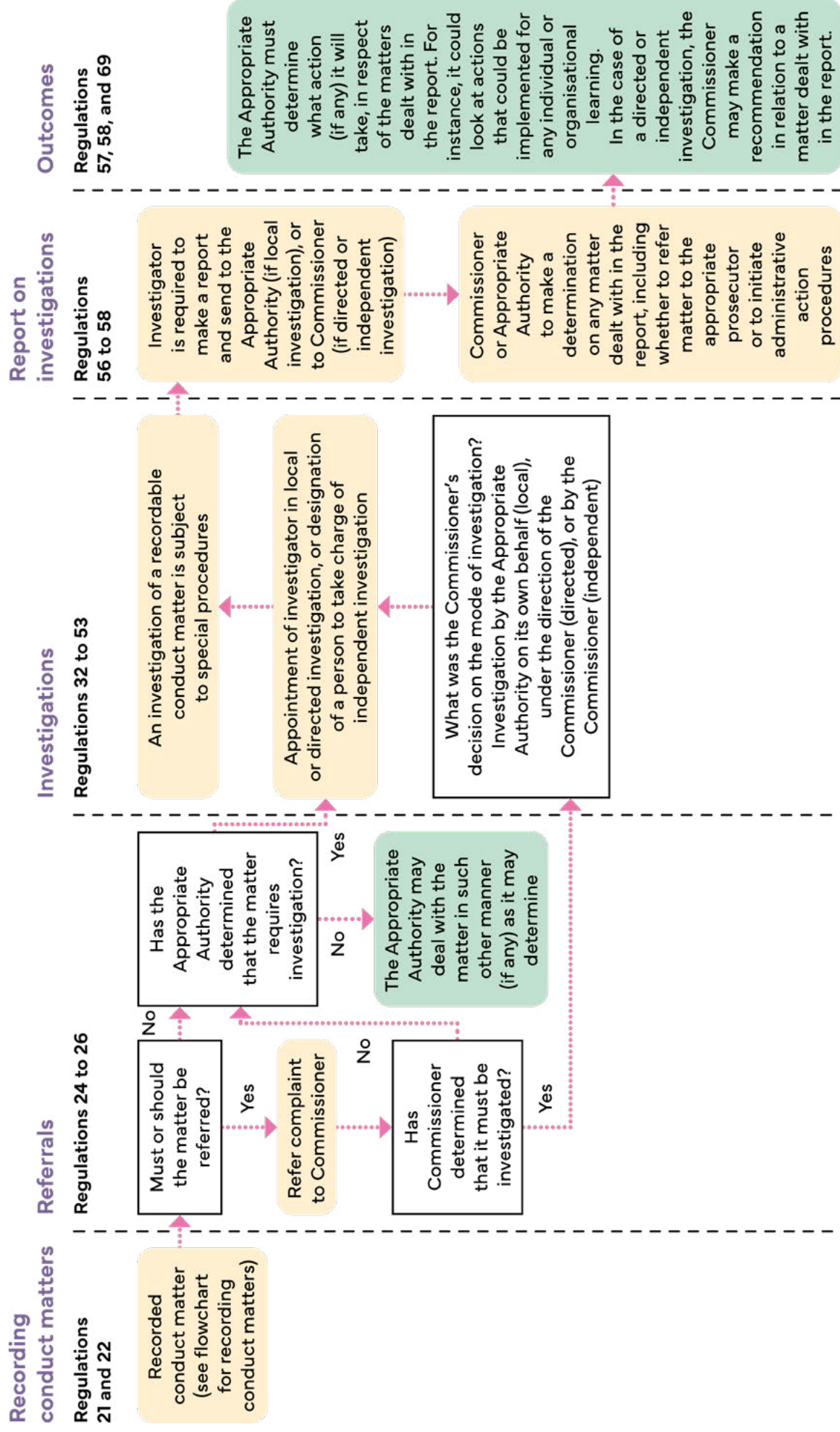
Note 2: Where possible, complaints may be resolved during this call.

# Annex E: Recording conduct matters flowchart

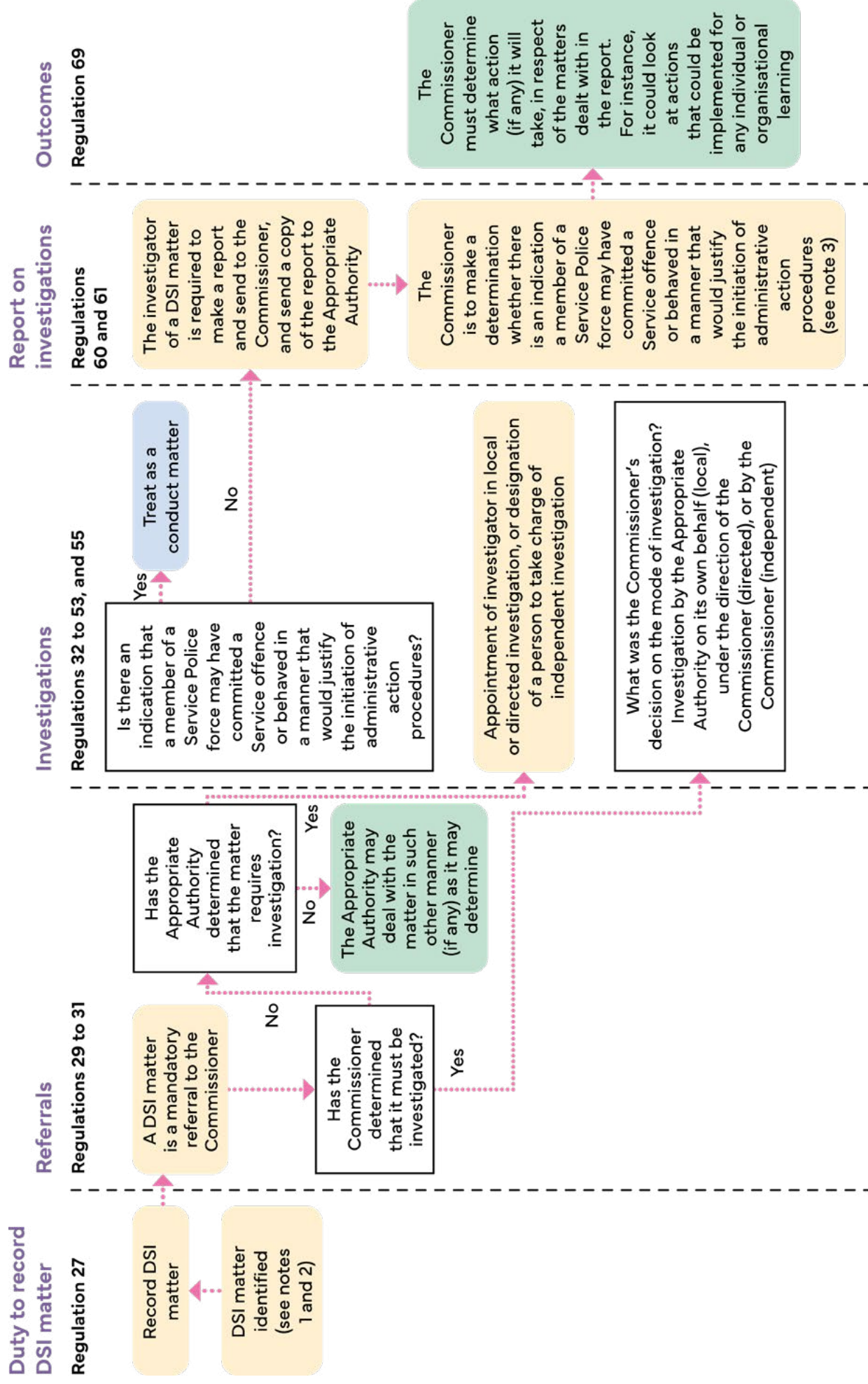




# Annex F: Conduct matters flowchart



# Annex G: DSI matters flowchart



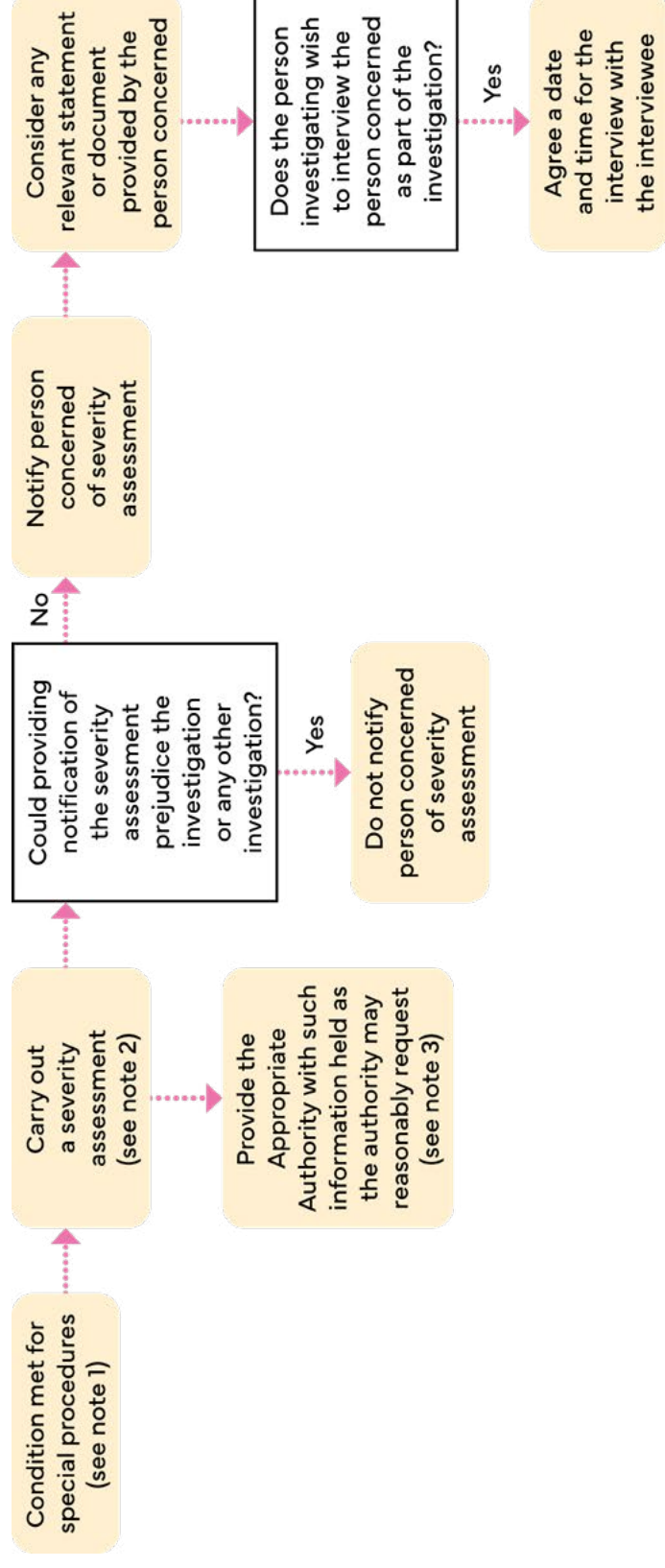
**Note 1:** A DSI matter means any circumstances in, or as a result of which, a person has died or sustained serious injury (unless the circumstances are or have been the subject of a complaint or amount to a conduct matter), and: had been arrested by a member of a Service Police force and had not been released from that arrest, or was otherwise detained in the custody of a member of a Service Police force; or at or before the time of the death or serious injury, the person had contact (of whatever kind, and whether direct or indirect) with a member of a Service Police force who was acting in the execution of their duties; and there is an indication that the contact may have caused – directly or indirectly – or contributed to the death or serious injury.

**Note 2:** Appropriate Authorities must ensure that they have processes in place to identify and refer DSI matters without delay.

**Note 3:** Where the Commissioner determines there is an indication, the Appropriate Authority must record the matter under Regulation 22 as a conduct matter. This will then follow the process for conduct matters (see flowchart for conduct matters).



# Annex H: Special procedures flowchart



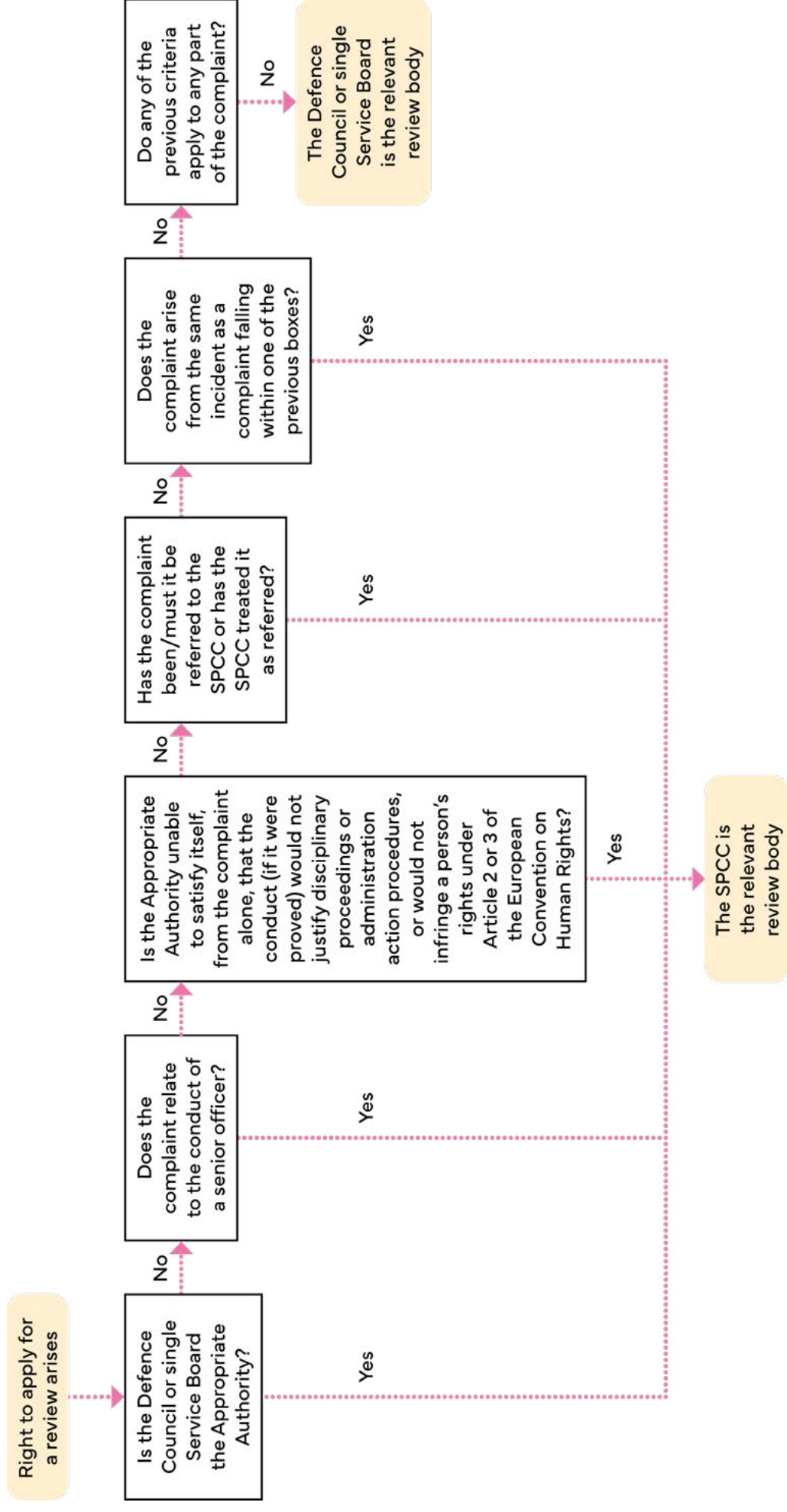
Note 1: There is an indication that a member of a Service Police force may have committed a Service offence or behaved in a manner that would justify initiating administrative action procedures (see glossary).

Note 2: The severity assessment may be revised where appropriate (as set out in Regulation 49).

Note 3: The purpose for providing such information is so that the Appropriate Authority can determine whether the person concerned should be, or should remain, suspended from serving as a Service Police officer.



# Annex I: Relevant review body flowchart



# Annex J: Super-complaints

## 1. Background

- 1.1 The Service Police super-complaints system is governed by **Part 4 of the Regulations**. His Majesty's Chief Inspector of Constabulary (the Chief Inspector) and the Commissioner both have statutory obligations under the Regulations. The Regulations envisage a joint process, involving the Chief Inspector and the Commissioner.
- 1.2 The Service Police super-complaints system enables designated bodies to raise issues or concerns on behalf of the public about a feature or features of policing in one or more of the Service Police forces that is, or appears to be, significantly harming the interests of the public. See Regulation 88 of the 2023 Regulations. An example of a feature of policing is how the Service Police investigate domestic abuse.

## 2. Designated bodies

- 2.1 Designated bodies with the SPCC system are:
  - Advocacy After Fatal Domestic Abuse – [www.aafda.org.uk](http://www.aafda.org.uk)
  - the Centre for Military Justice – [centreformilitaryjustice.org.uk](http://centreformilitaryjustice.org.uk)
  - Royal Air Forces Association – [www.rafa.org.uk](http://www.rafa.org.uk)
  - Salute Her UK – [www.saluteher.co.uk](http://www.saluteher.co.uk)

## 3. How we investigate

- 3.1 To be eligible for investigation, a super-complaint must comply with the requirements set out in Regulation 92 of the 2023 Regulations. In summary, super-complaint investigations usually focus on four investigative questions:
  - Is there a feature of policing?
  - Is significant harm being caused?
  - Does the feature of policing cause the significant harm?
  - If it is not the feature of policing causing the harm, what is?
- 3.2 Where a super-complaint is eligible for consideration, the Chief Inspector and the Commissioner have a number of tools available to investigate the matter, including conducting interviews with Service Police officers and with victims, complainants or others affected, as well as seeking and analysing data.

- 3.3 The Chief Inspector and the Commissioner have powers in relation to the investigation (Regulation 97) and information sharing (Regulation 98). These include the power to request advice, inspect premises and for His Majesty's Inspectorate of Constabulary and Fire and Rescue Services and the SPCC to share information with each other.
- 3.4 At the conclusion of the investigation, the Chief Inspector and the Commissioner then make such recommendations to any person as they consider appropriate (Regulation 96).

## 4. Duties of His Majesty's Chief Inspector of Constabulary and the SPCC

- 4.1 Chapter 3 of Part 4 of the Regulations set out duties in relation to super-complaints. These include duties to:
- acknowledge receipt of the super-complaint: Regulation 93 (Chief Inspector)
  - determine eligibility for consideration: Regulation 94 – note that this duty falls on both the Chief Inspector and the Commissioner
  - provide progress reports: Regulation 95 – this includes a requirement for an explanation (see Regulation 95(2)) **“of the steps the Chief Inspector and the Commissioner have taken in relation to the investigation”** (Chief Inspector)
  - report the outcome of the investigation: Regulation 96 – this is triggered **“[w]hen the Chief Inspector and the Commissioner have concluded an investigation of a super-complaint”** (Chief Inspector)

# Annex K: Points of contact and sources of independent support

## Submission of Service Police complaint forms and application for review forms:

### Royal Navy Police

RN Police Professional Standards Department  
HQ Provost Marshal (Navy)  
West Battery Ground Floor HMS EXCELLENT  
Whale Island  
Portsmouth, PO2 8ER

Email: [NAVYPOLICE-HQPSDMAILBOX@mod.gov.uk](mailto:NAVYPOLICE-HQPSDMAILBOX@mod.gov.uk)

### Royal Military Police

RMP Professional Standards Department  
Building 398  
Trenchard Lines  
Upavon  
Wiltshire, SN9 6BE

Email: [ArmyPM-PSD-Mailbox@mod.gov.uk](mailto:ArmyPM-PSD-Mailbox@mod.gov.uk)

### Royal Air Force Police

RAFP Professional Standards Department  
Building 36  
RAF Henlow  
Bedfordshire, SG16 6DN

Email: [RAFP-PSDMULTIUSER@mod.gov.uk](mailto:RAFP-PSDMULTIUSER@mod.gov.uk)

### Defence Serious Crime Command

DSCC Professional Standards Department  
3rd Floor  
Overlord Building  
Southwick Park  
Hampshire, PO17 6EJ

Email: [People-DSCC-PSDMailbox@mod.gov.uk](mailto:People-DSCC-PSDMailbox@mod.gov.uk)

## Sources of independent support

Service Police Complaints Commissioner

6th Floor Zone M, MOD Main Building, Whitehall, London SW1A 2HB or email:

[People-DPT-SPCC-enquiries@mod.gov.uk](mailto:People-DPT-SPCC-enquiries@mod.gov.uk).

Victim Support: phone 0808 168 9111 (in Scotland, please call 0300 3321000 and in Northern Ireland please call 0289 0243133)

Health Assured: B&H Helpline: phone 0800 014 2381 or 0330 008 5942 (overseas), which is free to call 24 hours a day.

Veterans' Gateway: phone 0808 802 1212 or visit [www.veteransgateway.org.uk](http://www.veteransgateway.org.uk).

The Royal British Legion: phone 0808 802 8080 or visit [www.britishlegion.org.uk](http://www.britishlegion.org.uk).

Combat Stress: for veterans phone 0800 138 1619, and for Serving personnel phone 0800 323 444, or you can text 07537 404719 or email: [helpline@combatstress.org.uk](mailto:helpline@combatstress.org.uk).

The Employee Assistance Programme: phone 0800 731 8629, which is free to call 24 hours a day.

Samaritans: phone 116 123

Army Welfare Service: phone 01904 882503/504

Forces Helpline: phone 0800 260 6767

Civilians who are members of a trade union can call their national trade union helpline.

Acas: Civilians can contact Acas on 0300 123 1100 for free advice on workplace rights, rules and best practice.

